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NOTES OF DECISIONS

UNDER THE

REPRESENTATION OF THE PEOPLE ACTS

AND THE

REGISTRATION ACTS

1908.

BY

WILLIAM LAWSON, LL.D.,

BARRISTER-AT-LAW,

REVISING BARRISTER FOR THE COUNTY OF DUBLIN.

DUBLIN:
ALEX. THOM & CO. (LIMITED)

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P R E F A C E .

THIS Part (Vol. 3, Part VIII.) contains reports of fifteen Registration cases (including a note of *Kent v. Fittall* (No. 2), decided on July 22, 1908, too late for insertion in Part VII.)—nine being Irish, five English, and one Scotch. In *Coyle v. Mahon* the Court of Appeal in Ireland followed their decision of the previous year in *M'Bride v. Bryans*, that the occupier of a room through which there was a right of passage was not entitled as inhabitant occupier.

In *M'Laughlin v. Swan* the same Court held that in the particular circumstances of the case, no person being misled, the Revising Barrister had power to strike out part of the description of the qualifying premises (described as "Castletown from Castletown,") and so alter a succession claim into a claim for one house only. This decision, if of general application, would conflict with the rule laid down in *Hurcum v. Hilleary* (1894) 1 Q.B. 579, and *M'Combe v. Buchanan*, 2 *Lawson* 42, that such an amendment is an alteration of the qualification and cannot be made.

The Devonport case came up for a third time in *Kent v. Fittall* (No. 3), when the Divisional Court held that the Revising Barrister, in considering whether *prima facie* proof had been given in support of an objection that the occupier of a room in a house in which the landlord resided was not entitled to the household franchise, had no power to take evidence as to a general usage in similar houses in the borough. The case was stated to raise this point, and in accordance with it the Revising Barrister was directed to complete the revision, as was done by the Court of Appeal in *Kent v. Fittall* (No. 2), otherwise it is difficult to see how there could be an appeal from a decision as to *prima facie* proof of a ground of objection, which is always a matter for the Revising Barrister.

Two points as to lodgers came from the borough of Shrewsbury: in *Major's Case* it was held that the fact the landlord and lodger were father and son, was not in itself evidence to rebut the *prima facie* case established by the lodger's declaration. In *Cartwright's Case* it was held that overseers who objected to persons on the old lodger list are bound to appear in support of their objections, and that a direction to them by the Revising Barrister to object in all cases where the parties were father and son was wrong.

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NOTES OF DECISIONS
UNDER THE
REPRESENTATION OF THE PEOPLE ACTS
AND THE REGISTRATION ACTS.

Household Franchise.

Separate Dwelling—Rooms in House—Exclusive use—Right to pass through Room.

The tenant of a house sublet one room upstairs, retaining in his own occupation the kitchen, a room beside the kitchen, and a front bedroom upstairs. It was necessary for the sub-tenant to pass through the kitchen in order to reach his room, or to reach the yard, where the only sanitary conveniences for the house were. The tenant's name was on the list of voters as inhabitant occupier of the whole house.

The Revising Barrister found (1) that the sub-tenant had, as against the voter, the right of passage through part of the qualifying premises, such right being necessary for the ordinary user of the premises sublet; (2) that the sub-tenant was not a lodger, but an inhabitant occupier; (3) that the voter was in exclusive occupation of rooms other than the kitchen, and that such rooms did not by themselves constitute a dwellinghouse; (4) that the voter's dwellinghouse, in the ordinary sense of the word, was made up of the rooms and the kitchen. The Revising Barrister held that the case was indistinguishable from *M'Bride v. Bryans* (1), and struck out the name of the voter.

Held, that the case came within *M'Bride v. Bryans* (1), which the Court declined to re-open. *Coyle v. Mahon* (1908, No. 15); *Green v. Mahon* (1908, No. 18): [1908], 2 Ir. R. 622.

(1) *Coyle v. Mahon*.

This case was stated by the Revising Barrister, P. Lynch, K.C., as follows:—

The name of James Coyle appeared on the list No. 17 of the South Division of the County Borough of

(1.) [1908] 2 Ir. R. 329.

*Coyle v.
Mahon.
Green v
Mahon.*

Londonderry, being the Town Clerk's list of male persons entitled to vote in an election of a member to serve in Parliament as follows:—

23, Coyle, James, 28, Deanery-street, inhabitant householder, house and yard, 28 Deanery-street."

The said name was duly objected to.

It appeared from the evidence that the voter was tenant of the qualifying premises during the qualifying period. He had sublet one room upstairs to a sub-tenant named Michael Gavigan, who occupied the said room as an inhabitant householder. The voter was in occupation of the kitchen, a room beside the kitchen, and a front bedroom upstairs. It was necessary for the said sub-tenant to pass through the kitchen in order to reach his room upstairs. It was also necessary for the said sub-tenant to pass through the kitchen in order to reach the yard. In the said yard there was the only water closet for the said house, and also the other sanitary conveniences attached to the said house, none of which were upstairs.

It was contended on behalf of the objector that on the foregoing facts the sub-tenant had the right of passage through the said kitchen, being part of the voter's qualifying premises, and that the case fell within the decision of *M'Bride v. Bryans*.

It was contended on behalf of the voter that he was in exclusive occupation of at least a room off the kitchen, and a bedroom, and that I could amend, or that I should find, that he was in separate occupation of the two rooms and kitchen as his dwelling-house, subject to the rights of passage aforesaid, and not either as joint tenant or joint occupier thereof, and that I ought, if necessary, to amend to make that matter clear.

On the foregoing evidence I found the following facts:—

- (1) That the sub-tenant had, as against the voter, the right of passage through part of the qualifying premises; such right being necessary for the ordinary user by the said sub-tenant of the premises sublet to him by the voter.
- (2) That the said sub-tenant was not a lodger, but an inhabitant occupier.

- (3) That the voter was in exclusive occupation of rooms other than the kitchen, and that such rooms did not by themselves constitute a dwelling-house. *Coyle v. Mahon*.
- (4) That the voter's dwelling-house in the ordinary sense of the word consisted of a kitchen, room, and bedroom.
- (5) That the voter occupied the kitchen and two rooms mentioned separately as his dwelling-house, save in so far as such occupation was affected by the right of way mentioned. *Green v. Mahon*.

I was of opinion that I could not amend the description of the qualifying premises; but I would have made any amendment that I lawfully could make in favour of the vote.

On the above findings I was of opinion that the case was governed by *M'Bride v. Bryans*, and I therefore expunged the name.

The question for the Court of Appeal is:— Whether, having regard to the above findings, I was right in law in so deciding. If not, or if I could have amended, the name is to be restored to the list.

The rights of the other persons named in the Schedule (1) hereto depend upon substantially identical considerations, and are to be ruled by this case.

(2) *Green v. Mahon*.

This case, stated by the Revising Barrister, J. S. Baxter, was exactly similar in its facts and findings, save that the voter was in occupation of a kitchen and another room downstairs. Forty-five other cases were scheduled as depending on the cases stated.

O'Brien, K.C.; A. M. Sullivan, K.C.; and Patton for the appellants:—

They submitted (i) that the cases were distinguishable in their facts from *M'Bride v. Bryans* (2), and (ii) that the Court should allow the question decided in that case to be re-argued. It was inconsistent with *Magee v. Colquhoun (Evans' case)* (3) and *Torish v. Love* (4).

Henry, K.C., and Osborne for the respondents:—

The findings here are stronger against the voters than those in *M'Bride v. Bryans*, which should not

(1.) 28 in number.
(3.) 1 L. 85.

(2.) [1908] 2 I. R. 329.
(4.) (1894) 2 I. R. 372; 1 L. 85.

*Coyle v.
Mahon.
Green v.
Mahon.*

be reopened. *Magee v. Colquhoun* (*Evans' Case*) and *Torish v. Love* were different cases. See *Torish v. Brown* (1).

Lord O'Brien, *L.C.J.*—This case has been argued with considerable energy by Mr. O'Brien and Mr. Sullivan; but we all think that it is governed by *M'Bride v. Bryans* (1). Mr. Lynch, who stated this case so clearly, brings it within *M'Bride v. Bryans* (1). He stated the facts as they existed; and no other conclusion than the one he arrived at would be warranted. He found that the sub-tenant had as against the voter the right of passage through part of the qualifying premises, such right being necessary for the ordinary user by the said sub-tenant of the premises sublet to him by the voter. I turn to *M'Bride v. Bryans* (1), and venture to read a passage from my own judgment in that case:—"The question in the case is—Does the tenant of the lower story occupy separately the subject matter of the tenancy? The lower story includes a kitchen, and the tenant of the upper story has a right of passage to the upper story over a part of this kitchen. Can it be said that the tenant of the lower story occupies separately? I think not. She has not the sole and exclusive use of the kitchen. The tenant of the upper story has a right to go through this kitchen at all times during the day and night, a most burdensome right. I know no right that in any case would be more burdensome or otherwise. That being so, I do not think that the lower tenant has a right to occupy or use the kitchen part of the subject matter of the tenancy solely and exclusively. Can it be said that while the upper tenant is actually using that part of the floor of the kitchen that leads to the stairs, he is not occupying for the time being a part of the kitchen, that is to say, a part of the lower tenant's tenancy"? This is all relevant to the present case. In *M'Bride v. Bryans*, Holmes, *L.J.*, and I dealt with the question reserved for our consideration, namely, whether the Revising Barrister was right in rejecting the vote because the tenant of the lower story was not in exclusive occupation of the whole of the qualifying premises. See 3 *Lawson*, 228, where the contentions of the respective solicitors and the reservation of the Revising Barrister are set out. Holmes, *L.J.*, and I applied ourselves to the question we were asked to decide. The question before us was not whether, where a tenant occupied exclusively the whole of the qualifying premises, he

lost his vote by reason that he used jointly with another person, say, an ashpit, or lavatory, or stairs, or hall, or reading room, which, though part of and belonging to the general building, was not part of the qualifying premises. The question before us in *M'Bride v. Bryans* was whether there was an exclusive occupation where there was a right of way in question over part of the qualifying premises. The same question is here. We decided that the Revising Barrister was right, and so we decide also that he was right. Judgment was reserved in *M'Bride v. Bryans*, and the case dealt with with great deliberation. It cannot now be reopened. I repeat what I said in *M'Bride v. Bryans*, that the right which was found to exist, viz., to go over part of the qualifying premises at all times, both day and night, seems to me a most burdensome right, and does not at all suggest to me the application of the maxim "*De minimis non curat lex.*"

FitzGibbon, *L.J.*—The first, third, and fourth of Mr. Lynch's findings, and the first, fourth, and fifth of Mr. Baxter's findings bring these cases within the express terms of *M'Bride's Case*, which binds me; and I therefore must concur in affirming the decision of the Revising Barristers. These findings are:—

"(1) That the subtenant had, as against the voter, "the right of passage through part of the qualifying "premises (in both cases the kitchen), such right "being necessary for the ordinary user by the sub- "tenant of the rooms (or room) sublet to him; (3), " (4) That the voter was in exclusive occupation of "rooms (or a room) other than the kitchen, during "the qualifying period; but that such rooms (or "room) did not by themselves constitute a dwelling- "house; (4), (5) The voter's dwelling-house was "made up of the rooms (or room) and the kitchen."

In both cases there is an express finding that the "dwelling-house" includes the kitchen; and *M'Bride's Case* decides that a "burdensome" right of passage through a kitchen destroys the franchise of the occupier, because it is inconsistent with that "exclusive use" which the majority of the Court held to be essential to the qualification of an inhabitant householder. Having in *M'Bride's Case* anticipated that "many thousands" of cases, or even "countless cases" might be found in which the franchise had been given to inhabitants who, occupying parts of houses as separate dwellings, also used for their dwellings other part of the same houses, of

*Coyle v.
Mahon.*
*Green v.
Mahon.*

*Coyle v.
Mahon.
Green v.
Mahon.*

which they had not the sole control or exclusive occupation, I am not surprised to find that the present decision disfranchises forty-seven voters in Londonderry alone. But I am bound by *M'Bride's Case*, though I am still unable to understand how it can be reconciled with the Act of 1878, section 5, which enacts that "where an occupier is entitled to the sole and exclusive use of part of a house, that part shall not be deemed to be occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part." We cannot reopen the question, unless or until the full Court thinks it right to reconsider it, as *Hasson v. Chambers* (1) was reconsidered after *Stribling v. Halse* (2), which it had followed, had been "discredited."

Holmes, *L.J.*—I am always willing to reconsider a decision when due care and attention have not been given. *McBride v. Bryans* was at hearing for two days, and the Court reserved judgment. If I were to reconsider it I should come to the same conclusion.

Occupation as Tenant—Exclusive Occupation.

*O'Kane v.
Patton
(South
Londonderry).*

A voter had with his brother and sisters lived for thirty years on his father's farm, and for twenty-five years of that period he was judicial tenant of the farm. The father had made a will, but it had not been proved.

The Revising Barrister found as a fact that the voter exclusively occupied the dwelling-house on the farm as sole tenant during the qualifying period. The Court affirmed the decision.

O'Kane v. Patton (1908), No. 20.

The case was stated as follows:—

The name of John Patton, junior, appeared on the Register for the Registration Unit of Clady, Polling District of Kilrea, and South Division of the county of Londonderry, at No. 65, his place of abode being Tyanee, the nature of his qualification being inhabitant householder, and the townland or denomination where the property was situate out of which he claimed being Tyanee. The retention of the name on the list was duly objected to by Joseph O'Kane, of Gortmacrane, Kilrea, and a *prima facie* case in support of the objection was made.

John Patton, junior, the voter in question, was examined on oath, and gave the following evidence:—

He occupied, and with his four sisters and one brother resided on, a farm of land at Tyanee as tenant to Edward M'Neill at a yearly rent of £18 12s. 6d. (He had a second farm which he had himself bought six years previously for £225.) His father, who had been dead for thirty years, had owned the farm at Tyanee. At the time of his (the father's) death he left four daughters and two sons living on the farm. They all continued to live there till the present time. The father made a will leaving the farm to the voter (John Patton, junior), but no probate of the will had been taken out. The sisters were to get money under the will, and after the father's death the rent had been paid for a number of years in the name of "the representatives of Archibald Patton, deceased," Archibald being the father's name. In 1882 the voter got a fair rent fixed in his own name.

The voter was asked on cross-examination: "Could you turn out your sisters and brother?" He replied: "I do not know whether I could or not. I have no notion of it."

The solicitor for the objector called for production of the will, and objected to any evidence being given as to its contents. The will was not produced.

On the above facts I retained the voter's name on the register as an inhabitant householder.

A notice appealing from this decision was duly served on me on behalf of the objector on the ground that the voter was not the sole owner or tenant, and that others had legal rights or distributive shares.

If I was wrong in my decision the name of John Patton, junior, is to be expunged from the Register.

O'Brien, K.C., and Muldoon for the objector.

There is no finding one way or the other. He has not found the necessary facts to enable him to retain the name on the list. The case should be sent back.

Henry, K.C., for the voter.

I submit that he occupied as tenant, and that the brother and sisters merely lived there with him.

The case was sent back to the Revising Barrister to state his finding of fact upon the question: "Whether the voter exclusively occupied the qualifying premises as sole owner or tenant during the qualifying period?"

*O'Kane v.
Patton.*

The answer was as follows:—"My finding of fact was that inasmuch as the voter had got a fair rent fixed in his own name, his sisters and brothers residing with him at the time, and as that assignment had continued for twenty-five years the voter exclusively occupied the qualifying premises as sole tenant during the qualifying period."

FitzGibbon, *L.J.*—This is an example of the good old principle that if you take care of the facts the law will take care of itself. If he had stated in the case what is now stated there would have been no difficulty.

Lord O'Brien, *L.C.J.*—I think that he intended to convey that, but did not state it in so many words.

Holmes, *L.J.*—I thought so.

The Court affirmed the decision.*

*Occupation as Tenant—Father sub-tenant of room
in house occupied by son by virtue of service.
Representation of the People (Scotland) Act,
1868 (31 and 32 Vict. c. 48), s. 3. Representa-
tion of the People Act, 1884 (48 and 49 Vict.,
c. 3), ss. 2 and 7 (4).*

*Milne v.
Brunton.
(County of
Peebles.)*

A chauffeur by virtue of his employment occupied a house, in respect of which he was entered on the list of voters under the Representation of the People Act, 1884, s. 3. He, with his employer's sanction, sublet a room in the house to his father, who claimed, under the Representation of the People (Scotland) Act, 1868, s. 3, and the Representation of the People Act, 1884, ss. 2 and 7 (4), to be entered in the list of voters for the County of Peebles as inhabitant occupier as tenant.

Held by the Registration Appeal Court that the claimant was not entitled to be entered on the list, by Lords Pearson and Ardwall, on the ground that he was a joint occupier of the house with his son; and by Lord Johnston, on the ground that he was a lodger, not a tenant.

Sembly by Lord Johnston that a sub-tenant of a person occupying a house by virtue of his service or employment was not entitled to be entered on the list of voters. *Milne v. Brunton*, 46 S. L.R. (Dec. 5th, 1908), 229.

* The Revising Barrister must have come to the conclusion that the brother and sisters assented to the occupation of the voter as tenant.

David Brunton, labourer, Minden, Eastgate, Peebles, claimed to have his name inserted in the list of voters for the Counties of Peebles and Selkirk as tenant of a house at Minden. He was objected to by R. A. Milne, a voter on the list, on the ground that he was not possessed of a household qualification in terms of the Representation of the People Act, 1884, ss. 2 and 7 (4). The Sheriff-Substitute over-ruled the objection, and admitted the claim. *Milne v. Brunton.*

The objector appealed. The case stated as follows:—

The following facts were admitted. The house at Minden in respect of which the claim is made belongs to Sir Henry Ballantyne, and is occupied by the claimant's son, George Brunton, chauffeur to Sir Henry Ballantyne, in virtue of his services as chauffeur, and in respect of such service occupancy the said George Brunton is entered as a voter on the list of voters for the ensuing year. One room in the said house is, with the consent of Sir Henry Ballantyne, let by the said George Brunton to his father, the claimant, and has been occupied by him for the qualifying period.

The claimant contended that having occupied the subject claimed upon as tenant for the qualifying period he was entitled to be enrolled in the register of voters for the County of Peebles.

The objector contended (1) that as the claimant's son is the tenant of the house in question in return for his services, there had not been, and there could not be, constituted between the claimant and his son a tenancy of the said house effective in law to afford the claimant a qualification; (2) alternatively, that a joint occupancy had been constituted so as to disqualify both occupants; and (3) that the occupancy of the qualifying subjects being defeasible, no qualifying tenancy could be instructed.

The questions of law for the opinion of the Court were: (1) Is the claimant, within the meaning of the Representation of the People Act, 1884, ss. 2 and 7 (4), an inhabitant occupier of the said house as tenant, and so entitled to be admitted to the register of voters for the County of Peebles? (2) Is the tenancy of the claimant defeasible, and therefore insufficient to support the qualification claimed?

Johnston, K.C., and M. P. Fraser for the appellant.

(1) There were no facts stated to justify an inference that the claimant occupied the room "as a

Milne v. Brunton. separate dwelling." For aught that appeared he might merely occupy as a lodger.

(2) The occupancy of the claimant was defeasible; a derivative household qualification could not be grafted on a service qualification. The tenancy of the son being defeasible at the pleasure of his employer, the father could not be in a better position than the son in that respect. (3) The father was merely a joint occupier with the son. *Milne v. Murray*, 1907, S.C. 401; 44 S.L.R. 301; 3 Lawson 201; *Bishop v. Duffy* (1894), 22 R. 192; 32 S.L.R. 152, 2 Lawson 14, were referred to.

A. M. Anderson for the respondent.

The case can be sent back if the facts are not sufficiently stated. A person occupying by virtue of service may be entitled, though his title is defeasible. *Urquhart v. Adam* (1904), 7 F. 157; 42 S.L.R. 178; 3 Lawson 109. Therefore defeasibility is immaterial in the case of the sub-tenant of such a person. Joint occupation is not to be presumed here. *Milne v. Murray* is distinguishable; it was a case of husband and wife, and the wife, who occupied the house by virtue of service, purported to sub-let the whole house to her husband.

Lord Pearson, having stated the facts, said:—My opinion is that the claim is not made out. There is nothing to show that the room in question comes within the definition of "dwellinghouse" in s. 7 (4) of the Act of 1884, viz., "any house or part of a house occupied as a separate dwelling." It is one of the rooms in what is described as the "house which is occupied by the claimant's son"; and the room has been occupied by the father for the qualifying period. These are the terms in which the occupation is described, and they appear to me to point rather to joint occupancy than to a "separate dwelling." But in my view they entirely fail to set forth the statutory requirement of separate occupancy, and in my opinion the claimant's case fails for irrelevancy. It is unnecessary therefore to decide the other objection, viz., that the claimant's occupancy is defeasible at the will of the proprietor, and that it is impossible for one who is entitled to the service in respect of his occupancy of a house to create a tenancy in another as regards part of the house, sufficient in law to afford him a separate qualification. If such a case should occur it will require to be carefully considered in the light of Lord Kin-

near's opinion in *Urquhart v. Adam* (1904) 7, F. <sup>Milne v.
Brunton.</sup> 157; 3 *Lawson* 109.

Lord Ardwall.—I agree that the first question of law ought to be answered in the negative, and that it is unnecessary to answer the second. . . . His Lordship, having referred to the statements in the case as to occupation, continued: These statements are contradictory, because it is set forth in the first place that the claimant claims as tenant of a house at Minden, and then goes on to say that the house at Minden in respect of which the claim is made is occupied by the claimant's son, who is entered as a voter in respect of the house. This discloses at once a case of joint occupancy, and the explanation which follows to the effect that one room in the said house is let by George Brunton to the claimant does not remove the difficulty. Accordingly, I think that this case may be disposed of on the footing that a case of joint occupancy of a dwellinghouse is set forth, and consequently neither of the joint occupants is entitled to be registered, and certainly not the claimant. I also agree that there are not set forth in the case facts relevant to show that the claimant is tenant of a house in the sense of the statute.

Lord Johnston.—I think that this case admits of being disposed of on a very simple ground. The attempt to engrave a derivative tenancy qualification upon the so-called service franchise is, I think, a fraud on the statute. But not only does it fail, but I think it endangers the qualification of the servant who attempts to create it. The statute contemplates that he shall occupy the house, which is his by virtue of his engagement by service. It is difficult to see how he can so occupy, and at the same time admit to participate in the occupancy anyone else as matter of right. But it is unnecessary to consider that view of the consequence of the attempt. It is enough to say that the whole facts set forth by the Sheriff show that the claimant, assuming that he is there by right, occupies a room in his son's house as a lodger and not as tenant. *Bishop v. Duffy* 22 R. 192; 2 *Lawson*, 14. But there is nothing to show that he has any of the other qualifications for the lodger franchise, except that of occupancy *qua* lodger.

The Court answered the first question in law in the negative, found it unnecessary to answer the second question in law, allowed the appeal, and remitted the case to the Sheriff to delete the claimant's name from the register.

M'Philemy v. Harper (South London-Derry). Occupation as Owner—Title incomplete—Assignment not registered under Local Registration of Title Act, 1891.

An inhabitant occupier may occupy “as owner,” so as to be entitled to the franchise, although his title to the land on which the dwelling-house is situate has not been registered under the Local Registration of Title Act, 1891. *M'Philemy v. Harper* 1908, No. 14); 43 I.L.T.R., 98.

The facts of the case were as follows:—

The name of Edward M'Philemy appeared on the Register at 588 in the Clare Unit of the Polling District of Castlederg, Parliamentary Division of North Tyrone, as an inhabitant householder of a dwelling-house at Shanog.

He was duly objected to by Robert Harper on the grounds that he was not sole owner nor in sole occupation of the qualifying premises.

The following facts were proved:—

The property out of which he claimed was a farm with a dwelling-house upon it. It had previously belonged to Edward M'Philemy's mother. She died some years ago, leaving four children, Edward, Francis, and two sisters. Edward and Francis dwelt in the house together. About four years ago Edward and Francis signed an agreement to purchase the holding from the landlord, and were at that time accepted as joint tenants. On the 14th June, 1907, the two sisters signed a document, which is hereto annexed and marked “A,” consenting to Edward and Francis becoming tenants of the holding, and giving up any claim they had in specie which they might have against it. On the same date by another document, which is hereto annexed and marked “B,” Francis conveyed all his estate and interest in the holding to Edward. No notification of the execution of either of these documents was sent to the Land Commission, nor was either of these documents noted by the Land Commission; subsequently to the execution of said two documents, the sale to the tenants was completed, and Edward and Francis then received intimation from the Estates Commissioners that the sale had been ratified, that the vesting order had been out in their joint names, and that their names appeared as owners of the holding on the register kept in pursuance of the Local Registration of Title (Ireland) Act, 1891.

The Revising Barrister held that, although the two sisters and Francis had in fact released and conveyed

their interest in the holding to Edward, yet inasmuch as Francis and Edward had subsequently been registered as joint owners of the lands under the Local Registration of Title (Ireland) Act, until the conveyance of the 14th June, 1907, from Francis to Edward was registered under that Act, no interest passed by the conveyance, and that Francis still remained a joint owner of the owner of the holding with Edward. ^{M'Philemy v. Harper.}

He accordingly struck out the name of Edward M'Philemy. If he was wrong in so holding the name of Edward M'Philemy was to be reinstated in the Register.

O'Brien, K.C., and Dougherty for the voter.

The rights of the parties arose not after, but before, the vesting order and registration; accordingly Edward M'Philemy was in equity entitled to the whole place. It resembles the case where next-of-kin have given up their rights to the person claiming the vote, and that has been held sufficient. The Revising Barrister's decision went on s. 25 of the Local Registration of Title Act, which provides that a person shall not acquire any estate in registered land until he is registered as the owner, but strict proof of title is not required for an inhabitant householder. What was acquired by purchase was a graft on the previous interest, and subject to any rights or equities arising from its being such graft. Land Purchase (Ireland) Act, 1885, s. 8.

Babington for the objector.

"Previous interest" here was the interest of Edward and Francis in the holding. They both entered into the agreement to purchase, and allowed themselves to be registered as full owners. The Revising Barrister held that he could not recognise the assignment from Francis to Edward, as it had not been registered. The Land Commission Rules of 1897, O. 28, R. 2, provide that in the case of an assignment by the purchasing tenant after the agreement for purchase the title of the assignee should be proved before the Examiner of the Land Commission, but this was not done. This is not a case of the registered land being "subject to equities" within s. 29 of the Local Registration of Title Act, 1891.

Lord O'Brien, *L.C.J.*—The question before us is not one of strict legal title, but only one of occupation. Francis assigned and released everything to Edward, and it is plain that Edward was the only person in occupation as owner.

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FitzGibbon, *L.J.*—I agree. The case finds that Francis conveyed all his estate and interest in the holding to Edward, but that deed was not registered, and therefore title was not completed; but as regards the deed it was a *bona fide* deed made and acted on between the two brothers. The fact of the title being incomplete will not disentitle the person who is equitably entitled. Edward occupied as owner since the deed was executed.

Holmes, *L.J.*, concurred.

Pitts v. Michelmore
(County of Devon).

Rating—Successive Occupation—Unfinished House not Rated—Representation of the People Act, 1867 (30 & 31 Vict., c. 102) ss. 3, 26, 56, 59, Poor Law Amendment Act, 1868 (31 & 32 Vict.) s. 38.

A. occupied two dwelling-houses in immediate succession during the whole of the qualifying period from July 15th, 1907, to July 15th, 1908. He occupied the first house until June, 1908, when he went into occupation of the second house. He was rated and paid all rates due in respect of the first house, but as the building of the second house was not completed in April, 1908, when the rate for the half-year ending September 29th, 1908, was made, the house was not entered in the rate book, and no one was rated in respect thereof until after the termination of the qualifying period, and no claim to be rated in respect thereof, nor tender or payment under s. 30 of the Representation of the People Act, 1832, of the sum which would have been due had he been rated was ever made by A.

Held—That A. was not entitled to the franchise. The Irish cases of *Criglington v. Anderson*, 26 L.R. Ir. 129, and *McGaffigan v. Riddall*, 28 L.R. Ir. 257 considered. *Pitts v. Michelmore* [1909] 1 K.B. 227: (C.A.) [1909] 2 K.B. 244: 25 *Times* L.R. 492.

The facts of the case were as follows:—

Objection was duly taken to the names of Frederick William Pitts and six other persons, whose names were scheduled to the case, being retained on division 1 of the occupiers' lists for their respective parishes in the Torquay Division of the County of Devon on the ground that they had not been rated in respect of the qualifying period of occupation in accordance with the provisions of s. 3 of the Representation of the People Act, 1867.

Pitts occupied during the whole of the qualifying period (July 15th, 1907, to July 15th, 1908) in immediate succession as dwellinghouses premises known as 10 Peditford Terrace, Torquay, in the parish of Tormoham, and 3 Alexandra Terrace, Torquay, in the same parish, and had been duly rated, and had paid all rates due in respect of the first-mentioned premises.

Pitts came into occupation of 3 Alexandra Terrace in June, 1908; the then current rate for the parish had been made on April 6th preceding for the period ending September 29th, 1908, but by reason of the fact that on the date of the making of the rate the premises were unfinished, no one was then rated in respect therof, and in fact no one was rated in respect thereof between the commencement of Pitts' occupation and the termination of the qualifying period.

No claim to be rated in respect of the premises 3 Alexandra Terrace, and no tender or payment under the Representation of the People Act, 1832 (2 & 3 William 4, c. 45) s. 30, and the Parliamentary Electors' Registration Act, 1868 (31 & 32 Vict. c. 58) s. 30, of the sum which would have been due had he been rated were ever made by Pitts.

With regard to the six other scheduled cases, in one of them the facts were similar to those in Pitts' case; and in the remaining five cases the facts were also similar to those in Pitts' case, with the following qualifications:—In two of the cases the persons objected to in fact paid the sums, which would have been due had they been rated, on a date subsequent to the termination of the qualifying period as from the commencement of their occupation, and in the other three cases the overseers, on dates subsequent to the termination of the qualifying period, inserted the names in the current rates in pursuance of the powers conferred upon them by s. 38 of the Poor Law Amendment Act, 1868 (31 & 32 Vict., c. 122), and charged them, and were in fact paid by them in full, after the termination of the qualifying period, the sums due from the date of their going into occupation of the premises.

The Revising Barrister held that none of the above-mentioned persons were entitled to have their names registered on the respective lists and expunged their names therefrom.

If the Court should be of opinion that his decision was wrong the names were to be restored to the list.

F. F. Daldy for the appellant.

Pitts v. Michelmore. In the case of successive occupation the occupier need not be rated, he need only have paid the rates up to the preceding January 5th. *Rogers v. Lewis* (1); *Moger v. Escott* (2); *Palmer v. Wade* (3), is distinguishable from the present case. It merely decided that where a person went into occupation of a new house during the qualifying period, and while he was in occupation a rate was made from which the house was omitted, the occupier was not entitled to be registered as a voter. The Court there merely followed the decision of the Court of Appeal in Ireland in *McGaffigan v. Riddall* (4), where the facts were similar. Here the rate was made before the second house was finished, and before Pitts went into it. The house was, therefore, not upon the rate-book, and there was no rate to which the house could have been rated until after the expiration of the qualifying period. In similar circumstances it was held by the Court of Appeal in Ireland in *Criglington v. Anderson* (5), that the occupier was entitled to the franchise, the ground being, as was explained by Fitzgibbon L. J. in *Riddall v. McAleer* (6), where *Criglington v. Anderson* (5), was recognised as good law, that "it is sufficient in the cases of new houses valued for the first time during the qualifying period if they are so valued, and are rated to the first rate made after they come into existence, and after they have for the first time become 'rateable hereditaments' in the widest sense, i.e., premises that ought to be rated." *Criglington v. Anderson* was followed in *Gallagher v. Chambers* (7). The case comes within *Criglington v. Anderson* (5), *Riddall v. McAleer* (6), and *Gallagher v. Chambers* (7), and not within *McGaffigan v. Riddall* (4), and *Palmer v. Wade* (3). It was not necessary for Pitts to apply to have the house or his name entered in the rate book under s. 30 of the Representation of the People Act, 1832 (which is applied by s. 30 of the Parliamentary Electors Registration Act, 1868, to occupiers of premises capable of conferring the franchise for a county under the Representation of the People Act, 1867, and therefore now to occupiers of dwellinghouses in a county) or under s. 38 of the Poor Law Amendment Act, 1868, which first gave power to the overseers to put a new house on the rate-book during the currency of the rate. He referred also to Rogers on Elections, Vol. I. (16th Ed), pp. 128, 134; 1 Lawson, p. 143, note.

(1) 7 C. B. N. S. 29.

(2) L. R. 7 C. P. 188.

(3) [1894] 1 Q. B. 268.

(4) 28 L. R. Ir. 257.

(5) 2^o L. R. Ir. 131.

(6) 28 L. R. Ir. 268.

(7) 1 I. 138.

There was no appearance for the respondent.

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The Divisional Court (Lord Alverstone, *C.J.*, Walton and Sutton, *J.J.*) affirmed the decision.

Lord Alverstone, *C.J.*, in the course of his judgment, after reviewing the statutes, said that the decision in *Palmer v. Wade* was contrary to the contention that it was not necessary that the second house should be on the rate book. No doubt there was this distinction between that case and the present one, that there a rate was made during the qualifying period after the occupier had gone into occupation of the second house, and the house was not included in the rate. No reliance however, seemed to have been placed upon that circumstance, and it was not referred to in the judgment of the Court. That case showed that where the qualifying premises occupied in succession were not both in the rate book during the time when they were so occupied respectively, the occupier could not claim a vote. If the occupier had desired to protect himself, he could have applied to be rated under s. 30 of the Representation of the People Act, 1832, or under s. 38 of the Poor Law Amendment Act, 1868. He expressed no definite opinion in a case where no rate had been made at all, though he thought that in such a case the occupier would not lose his vote by reason of the premises not being in the rate-book. *Criglington v. Anderson* presented to his mind some difficulty. If he could have seen that the same statutes as to rating were applicable in Ireland as in England, he might have been inclined to follow that decision, especially as it was considered in *McGaffigan v. Riddall* to be good law. He was not satisfied, however, that in *Criglington v. Anderson* there was any power in the occupier to get the house put on the rate-book. However that might be, *Palmer v. Wade* governed the case, and he thought that the true effect of that decision had been correctly stated in Rogers on Registration, 16th Ed., p. 134, that the second house must be in the rate-book, otherwise the occupation will not confer the franchise.

Walton, *J.*, agreed, and said that *McGaffigan v. Riddall* seemed to have been decided on the footing that the house could not have been inserted in the rate-book by the guardians, though a tender of the proper amount of the rate was made during the qualifying period, and a demand was subsequently made by the occupier to be rated. If that was so, the present case was an *a fortiori* case, because under s. 38 of the Poor Law Amendment Act, 1868, the house might have been inserted in the rate-book. He felt

Pitts v. Michelmore, some difficulty in reconciling the decisions in *Criglington v. Anderson* and *McGaffigan v. Riddall*, though he did not say they were not reconcilable. However that might be, *McGaffigan v. Riddall* was adopted and followed by the Court in *Palmer v. Wade*, and he thought they were bound by that decision.

Sutton, *J.*, agreed.

An appeal was taken, but the Court of Appeal (Buckley, *L.J.*, and Kennedy, *L.J.*, Joyce, *J.*, doubting) affirmed the decision. [1909] 2 K.B. 244. 25 T.L.R., 492.

Buckley, *L.J.*, in the course of his judgment, said :— The second point with which I wish to deal is this. Sect. 3, sub-s. 3, of the Representation of the People Act, 1867, concludes with the words “to all rates, if any, made for the relief of the poor in respect of such premises.” As regards the house No. 3, Alexandra-terrace, no rate had been made in respect of it. It was a new house ; it was not in the rate-book, and no one was entered on the rate-book as being a person chargeable in respect of it. It was said that there were authorities in Ireland to the effect that the words “if any,” &c., meant if any rates were laid upon the particular house which was alleged to constitute the qualifying property. In *Criglington v. Anderson* (1) the Master of the Rolls in Ireland did, in giving judgment, certainly lay it down that this was the meaning of the words. To me it is a singular fact that FitzGibbon, *L.J.*, who was a member of the Court which decided that case, assented to the judgment delivered by the Master of the Rolls, for in *Owens v. Haurahan* (2), reported in the same volume and decided on the next day, he said :—“It seems to me that the words in s. 3, sub-s. 3, of the Act of 1867—‘to all rates, if any, made for the relief of the poor in respect of such premises’ during the qualifying period—were intended to provide against a man’s being disfranchised by the fact that, though he occupied a rateable hereditament, no rate was made during the qualifying period ;” meaning (as I understand) not that the premises in question had not been included in the rate-book, but that no rate had been made during the qualifying period in the parish in which the premises were situate.

Again, in *McGaffigan v. Riddall* (3), in which case FitzGibbon *L.J.*, delivered the principal judgment, he gave, as it seems to me, detailed reasons why the meaning attributed in *Criglington v. Anderson* (4) to the

(1) 26 L.R.Ir. 131.
(3) 28 L.R.Ir. 257.

(2) 26 I.R. 418.
(4) 26 L.R.Ir. 131.

words "all rates, if any," &c., was erroneous. If the meaning given to the words in *Criglington v. Anderson* were correct, it would follow, as it seems to me, that, if a man during the qualifying period occupied a rateable house, which the overseers by an oversight had omitted to include in the rate, and upon which no rate had been laid, he would be qualified, although in point of fact he had never been rated. I think that a perfectly impossible conclusion. I read the words "if any" in sub-s. 3, as meant to meet a case where, during the qualifying period, no rate has been made which could have affected the premises in question, and to provide that in such a case a person shall not be disfranchised by reason of the fact that owing to the affluence of the parish, or no money having been wanted, it had not been necessary to make any rate for the parish. It appears to me to be impossible to hold that these words apply so as to enable the appellant here to say that, no rate having been made on No. 3, Alexandra-terrace, during the period of his occupation, in the sense that the house was omitted from the rate-book, he has satisfied the conditions of s. 3, sub-s. 3, of the Act of 1867. The case of *M'Gaffigan v. Riddall* has been followed by the Divisional Court in *Palmer v. Wade* (1) where Lord Coleridge, C.J., held the decision in that case to have been right. He said in giving judgment:—"I was inclined to think that the revising barrister was right as to both matters. But the case of *M'Gaffigan v. Riddall* in the Court of Appeal in Ireland is a clear authority that he was wrong in regard to the parliamentary franchise. The head note is: 'The inhabitant occupier, during the whole or part of the qualifying period, of a dwelling-house which was rateable, and ought to have been rated, but was not rated for the relief of the poor to a rate which was made during the qualifying period, and during his occupation, is not entitled to the franchise.' That is simply this case." It appears to me that this is the proposition which was laid down in Ireland and approved by the Court in that case, and that it is perfectly well founded.

The result is that the appellant, who has been, during part of the qualifying period, an inhabitant occupier of premises which were not, and in respect of which he was not, rated to the current rate, and who has not paid the current rate, cannot say that he is qualified. The fact that he has paid all rates due from him down to the preceding 5th of January, that is, has complied with s. 3, sub-s. 4, of the Act of 1867, does not show that, as regards the premises occupied by him during the latter

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Pitts v. Michelmore. part of the qualifying period, he has fulfilled the condition imposed by s. 3, sub-s. 3. For these reasons I think that the judgment of the Divisional Court was right, and this appeal must be dismissed.

Kennedy, *L.J.*—I have come clearly to the conclusion, notwithstanding the fact that there are a number of decisions in Ireland which, I must say with the greatest respect for the Courts by which they were pronounced, do not appear to me to be all reconcilable with one another, that the appeal fails, and the judgment of the Divisional Court must be affirmed. I need not go through the sections, or refer in detail to the cases which have been already dealt with by my brother Buckley, *L.J.*, but, as the matter is one of importance, I wish in a few words to put broadly the view which I am disposed to take. In the legislation with which we are dealing, that is to say, the Act of 1867 and the subsequent Acts which have qualified or added to its provisions, taken together as a whole, the intention appears to me to be that the claim to the franchise of the inhabitant occupier of a dwelling-house should be based upon the occupation by him during a period of twelve months either of one rateable hereditament continuously, or of two or more rateable hereditaments in succession. It seems to me that it would be strange if it were provided that, in the case of continuous occupation of one dwelling-house during the qualifying period, there must be, either directly or indirectly through the owner of the qualifying premises, a continuous liability in respect of rates, but, in the case of successive occupation of two or more dwelling-houses, which is to be regarded as an equivalent for the continuous occupation of one, it were provided—as would, as the appellant's counsel was obliged to admit, be the result of his argument—that, if a man had occupied during part of the qualifying period a dwelling-house which was rateable, and had paid in respect of it all rates which had become due up to January 5, he should be entitled to the franchise if he has resided during the rest of the qualifying period in a house which was not on the rate-book at all, and which he occupied not merely without paying any rates in respect of it, but without being liable to any rates in respect of it. I cannot find in any of the cases any authority for such a proposition. There has been a suggestion, no doubt, made, which is referred to in Rogers on Elections, 16th Ed., p. 128, that, as regards the second house occupied in succession, provided the occupier had paid all rates due from him up to January 5th, the liability to payment of rates might not be requisite in the case of a ruinous place of residence, or one which had been so recently completed,

that it had not come into a valuation list nor into the rate-book during the qualifying period. The head-note in *Palmer v. Wade* (1) runs thus :—“The inhabitant occupier of a dwelling-house, which, ‘though rateable,’ has not been rated to a poor rate made during the qualifying period, and in respect of which such rate has not been paid, is not entitled to either the parliamentary or the municipal franchise.” I do not think the question there would have been entertained at all if the voter had been the inhabitant occupier of a dwelling-house which was not rated by reason of its not being a rateable subject-matter. The difficulty arose there because there had been no actual rating of the inhabitant occupier of the dwelling-house, though the house was rateable, and therefore in that particular case of course no rate was paid. I think the law as quoted by Lord Coleridge, *C.J.*, in *Palmer v. Wade* (1) from the judgment of FitzGibbon, *L.J.*, in *M'Gaffigan v. Riddall* is right :—“This enactment”—he was referring to s. 9, sub-s. 9, of the Representation of the People Act, 1884—“seems to me to imply that, except in the case of exempt premises, no one is entitled to be registered in respect of any dwelling-house for which no one is rated, and no rates are paid; and it would be unmeaning to require the name of the ‘inhabitant occupiers’ of ‘exempt premises’ to be entered on the rate-book, if rating was not in all other cases essential to the franchise.” It seems to me that, in the case of the premises here in question, as was pointed out in the judgment in the Divisional Court, there were provisions by which the appellant might, if he had taken the proper steps, by application to the overseers, have got his name placed on the rate-book, but no such steps were taken by him. In my opinion the decision of the Divisional Court, following as it does the judgment in *Palmer v. Wade* (1), which again followed the decision in *M'Gaffigan v. Riddall* to the effect that the second of the houses successively occupied must be rated to all rates made during the period of the voter’s occupation, is right, and that to decide otherwise would involve a proposition which, upon the authorities and the true construction of the statutes on the subject, would be untenable, namely, that in a case of successive occupation the claim to the franchise would be good, provided all rates due from the claimant had been paid up to January 5th, although the second house not only had not been rated to rates made during his occupation of it, but could not be so rated on account of its condition or character.

Joyce, J.—I am not completely satisfied that the decision of the Divisional Court was correct. I venture

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to think that the proper way of dealing with this question is to examine the provisions of the Acts of Parliament, without allowing one's mind to be confused by the numerous conflicting decisions on the subject which are not binding on this Court. I cannot help thinking that the Lord Chief Justice came to the conclusion at which he arrived in the Court below by reading into s. 28 of the Representation of the People Act, 1832, certain words which are not to be found in that section, and I think that the result is unfortunate, because it appears to me to have the effect of excluding from the franchise persons who possessed the substance of the qualification for it, and who, I am disposed to think, on a literal construction of the Acts, might have been placed upon the register.

Lodger Franchise.

*Declaration prima facie evidence of Qualification—
Rebutting Evidence—Relationship between
Lodger and Landlord. Parliamentary and
Municipal Registration Act, 1878 (41 & 42
Vict., c. 20), s. 23.*

*Major v.
Shrewsbury
Town Clerk.*

The *prima facie* evidence of the qualification of a person claiming as a lodger constituted by the declaration annexed to the claim is not rebutted by the mere fact that the claimant's landlord is his father. *Major v. Shrewsbury Town Clerk* [1909] 1 K.B. 348.

The case was stated as follows:—The appellant Leonard John Major claimed to have his name inserted in the lodgers' list for the Quarry Ward polling district, parish of St. Chad, in the borough of Shrewsbury. The following is a copy of the claim:—“Major, Leonard John: Bedroom, 2nd floor, and use of sittingroom, first floor, furnished: 4 to 6 Mardol Head: 15s. per week, including board: Mr. William Major, of 4 to 6 Mardol Head.”

No formal objection was made to the claim by any voter on the register for the borough, nor by the overseer of the parish. As it appeared on the face of the claim that the surname of the person stated to be the landlord of the appellant was the same as that of the appellant, the Revising Barrister inquired of the overseer of the parish whether the appellant was a son of the person whom he thus alleged to be his landlord. The overseer replied that the appellant was the son of the person named as the landlord.

The Revising Barrister held that the existence of this relationship between the appellant and the person whom he stated to be his landlord rebutted the *prima facie* evidence of a qualification furnished by the declaration attached to the claim, following in this respect his usual practice in similar cases, as he had found by experience that in the vast majority of cases of lodger claims where the parties are son and father no contract of any kind exists between them, and that, when any money payment is in fact made, it is merely a contribution towards the house-keeping expenses of the family. The Revising Barrister invited the party agent who was supporting the appellant's case to give him some evidence to establish the existence of a contract between the appellant and his father, which would legally constitute the former a lodger in the house of the latter, but the agent declined to furnish any evidence. The Revising Barrister therefore disallowed the appellant's claim.

If the Court should be of opinion that the Revising Barrister's decision was wrong, the register was to be amended by inserting the name of the appellant in the lodgers' list.

Lewis Coward, K.C., and Daldy for the appellant.

S. 23 of 41 & 42 Vict. c. 26 provides that "in the case of a person claiming to vote as a lodger the declaration annexed to his notice of claim shall, for the purposes of revision, be *prima facie* evidence of his qualification." This section applies to lodgers claiming for the first time as well as to claims by lodgers retaining the same lodgings in successive years. *Nuth v. Tamplin* (1). There was no objection to the claim, and the fact that the appellant was the son of his landlord was not evidence which rebutted the qualification furnished by the declaration. *Flynn's Case* (2) and *In Re Sale* (3) were also referred to.

There was no appearance for the respondent.

Lord Alverstone, C.J., in the course of his judgment said:—

In the present case the declaration, according to the headings which unfortunately are not set out in the case stated, gave the name of the claimant, the name of his landlord, and 15s. a week rent, including board, as the amount paid for a bedroom on the second floor and the use of a sittingroom on the first floor furnished. If any question had been raised, or if the

(1) 8 Q. B. D. 247. (2) 2. F. 269. [1900] W. N. 230. 3 L. 237.

(3) Colt. Reg. Cas. 152.

Major v. Shrewsbury Town Clerk Revising Barrister had said he was not satisfied with reference to the question of value, his decision to strike off the name might have been correct, because it is not clear that the declaration would have been *prima facie* evidence of the claim. The case states that the rent is 15s. a week, including board, and some question might have arisen as to the Revising Barrister being satisfied that the value of the rooms amounted to that which is necessary for a lodger's qualification; but the only point suggested by the Revising Barrister as that as to which he was not satisfied arose from the fact that the names were the same, and that he ascertained from the overseer that the appellant was the son of the person named as the landlord. The Revising Barrister did not direct further inquiry to be made into the case or require further evidence. He states in the case that he has found by experience that in the vast majority of cases of lodger claims where the parties are son and father no contract of any kind exists between them, and that when any money payment is in fact made, it is merely a contribution towards the housekeeping expenses of the family, that he invited the party agent who was supporting the appellant's case to give him some evidence to establish the existence of a contract between the appellant and his father which would legally constitute the former a lodger in the house of the latter, but that the agent declined to furnish any evidence. It seems to me that it cannot properly be said that there was any evidence which would rebut (or which the Revising Barrister could take into consideration by way of rebuttal) the *prima facie* effect of the declaration made by the claimant. In my judgment, therefore, the Revising Barrister ought to have inserted this name in the list, and the appeal should be allowed.

Walton and Sutton, *JJ.*, concurred.

£10 Occupation Franchise.

Premises occupied in succession.—Non-payment of Rates.—Liability of Occupier for Rates after Removal.—Second moiety of Rates in respect of first set of premises not paid. Local Government (Ireland) Act, 1900 (63 and 64 Vic., c. 63), s. 2.

M'Daid v. Durragh (Borough of Londonderry). A claim was made as joint rated occupier in succession from one set of premises in a borough to another. The claimant was in occupation of the first

set of premises when the rate for the financial year, *M'Daid v. Darragh.* which was to be collected in moieties, was struck, and continued in occupation of them for six months of the financial year, when he removed to the second set of premises. He paid the first moiety of the rates due on the first set of premises, and also the second moiety of rates due on the second set of premises. No demand note for the second moiety of the rates of the first premises was served on him, and it was not paid.

Held, that the entire rate was payable by the claimant, as he was in occupation when it was struck, and that the claimant was therefore disqualified. *M'Dermott v. M'Morrow*, 4 New Ir. Jur. 186; 38 I.L.T.R. 200 followed. *M'Daid v. Darragh* (1908, No. 19); 43 I.L.T.R., 99.

The case was stated by the Revising Barrister (J. S. Baxter) as follows:—

At a Court held in Londonderry for the Revision of the Lists of Voters for the County Borough of Londonderry, on the 18th day of September, 1908, and following days:

The name of Solomon Darragh appeared on the Town Clerk's List (No. 21) of persons claiming to be entitled to vote, as follows:—

26, Darragh, Solomon, 40, Carlisle road, Joint Rated Occupier of house, shop, and yard, with James Darragh (valuation £35), of house, shop, and yard, 40, Carlisle road, in immediate succession from joint rated occupier with James Darragh, 42, Carlisle road (valuation £35).

The said name was duly objected to.

It was proved before me, and I so find, that the claimant was duly qualified as a rated occupier, except he shall be held to be disqualified by non-payment of the rates due upon the premises, No. 42, Carlisle road, in manner hereinafter appearing.

The consolidated borough and poor rate for the County Borough of Londonderry was struck by a resolution of the Corporation at the beginning of April, 1907, to provide for the financial year extending from the 1st April, 1907, to the 31st March, 1908. The said resolution was in the following terms:—"The poor rate and several poor rates hereinafter set forth are adopted, and are allowed by the Council of the County Borough of Londonderry, at their meeting held this day, having been first certified by the Town Clerk to be in conformity with the valuation now in force, the same to be collected in two half-yearly moieties;

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that is to say, the first moiety on and after the 2nd April, 1907, and the second moiety on and after the 1st October next."

The claimant had been in occupation of the premises, No. 42, Carlisle road, prior to the 1st April, 1907, and continued in occupation of the said premises until the 30th September, 1907, when he removed to No. 40, Carlisle road. He duly paid the first moiety of the rates due on No. 42, and after his removal duly paid the second moiety of the rates due on No. 40. The second moiety of the rate due on No. 42 was not paid. No demand note for the second moiety of the rates on No. 42 was served on the claimant.

It was contended that the non-payment of part of the rates due in respect of one of the qualifying premises disqualified the claimant, inasmuch as such premises were not "qualifying" premises if all the rates due thereout were not paid.

I held as a matter of law that the claimant had *bona fide* paid all rates due by him during the qualifying period, and retained his name.

The question for the Court of Appeal is, whether I was right in so deciding. If not, the name is to be struck out.

The rights of the persons whose names are set out in the Schedule hereto (1) depend upon identical considerations, and will be ruled by this case.

A. M. Sullivan, K.C., and Patton for the objector.

One rate was made for the financial year, pursuant to s. 8 of the Local Government (Ireland) Act, 1900, which provides that "the Council of any urban district may, if they think fit, either immediately prior to or at the beginning of such local financial year, make one poor rate for the whole financial year, and collect the same in equal moieties, one moiety for each half year." In *M'Dermott v. M'Morrow*, 4 New Ir. Jur. 99, 38 I.L.T.R. 290, the King's Bench Division held on a case stated by magistrates that the person in occupation when the rate is struck for the entire year is liable for the entire rate, notwithstanding that he quits occupation during the year, unless he can prove a determination of the rating authority under 53 and 54 Vic., c. 30, releasing him from the liability. That case is directly in point.

Henry, K.C., and Osborne for the voter.

M'Dermott v. M'Morrow was not cited to the Revising Barrister, and rules the case.

The Court reversed the decision.

"Who shall occupy as Tenant or Owner" (1).—*Mahon v. O'Neill*
Occupation as Licensee.
(Borough
of London-
derry).

A person was returned on the Town Clerk's list for a borough as the rated occupier of a shop and office valued at £10. He had occupied the premises during the qualifying period as manager for the trustees of his father's will, who were the owners, and was also allowed to use the premises for his own business as a commission agent.

Held, that he did not occupy as tenant or owner, but merely as a licensee, and that he was not entitled to have his name kept on the list as rated occupier. *Mahon v. O'Neill* (1908, No. 16); 43 I.L.T.R., 101.

The facts of the case were stated by the Revising Barrister (J. S. Baxter) as follows:—

The name of Alexander O'Neill appeared upon the Town Clerk's List (No. 17) for the East Division of the County Borough of Londonderry as follows:—

1,001, O'Neill, Alexander, 45, Carlisle road, rated occupier; shop and office, 45, Carlisle road, £10.

The said name was duly objected to.

It appeared from the evidence of the voter that the premises were owned by the trustees of the will of his late father, and that under the said will the beneficial interest in the premises, and in other house property forming part of the father's estate, belonged to the voter and his brothers and sisters. The voter had not resided on the said premises during the qualifying period, but had during that period been in occupation of the shop and office. He managed the shop; also the other house property above referred to. His evidence was, that he collected the rent on the other house property for the trustees, and in consideration of his doing so was allowed by the trustees to use the premises for his own business, which was that of a commission agent. He did not pay any rent to the trustees. But he stated that he did not charge any commission on rents which he collected for the trustees, and that on rents which he collected for other persons he charged a commission of five per cent.

There was no direct evidence of a tenancy between the voter and the trustees, save in so far as such a tenancy can be implied from the foregoing facts.

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It was contended that the voter's occupation of the premises was solely by virtue of services rendered to the trustees, and therefore was not occupation as tenant.

On the foregoing evidence I found as facts:—(1) That the voter had occupied the qualifying premises during the qualifying period, and had been rated, and paid rates for such premises; (2) that his occupation was not that of a servant to the trustees; (3) that the trustees had agreed with the voter that he might occupy the premises in consideration of his collecting the rents as aforesaid; and (4) that the voter was in occupation of the premises as a tenant at will to the trustees. I therefore retained his name on the list.

The question for the decision of the Court of Appeal is:—Whether there was evidence to sustain my said findings, and in particular the finding as to a tenancy at will?

If there was not such evidence, the name is to be expunged.

Henry, K.C., and Osborne for the objector.

There was no evidence of a tenancy here. O'Neill was in possession as a mere licensee, and that is not sufficient. *Holland v. Chambers*, 32 L.R. Ir., 161, per Palles, C.B. O'Neill occupied the premises by permission of the trustees for his own business as commission agent, and also in connection with his position as manager for them.

Patton for the voter.

There is no evidence that O'Neill was there as servant of the trustees. Even if he was there as servant, he was not required to occupy the premises, and should be entitled to the franchise. *Dover v. Prosser* (1904), 1 K.B., 84. He was a tenant at sufferance, and, if not, a tenant at will.

Lord O'Brien, L.C.J.—There is no evidence whatsoever in this case that O'Neill filled the character of tenant at all. The evidence showed that he was there simply as a licensee to occupy the place as manager. Therefore, we hold that the finding of the Revising Barrister was wrong.

FitzGibbon, L.J.—It is entirely a question of fact on the case as stated. There is no evidence of tenancy.

Holmes, L.J., concurred.

£5 Freehold Franchise (1):

Joint Freehold.—Local Registration of Title (Ireland) Act, 1891 (54 and 55 Vict., c. 66), s. 84 (2).—*Devolution of Interest in Freehold Registered Land sold under Purchase Acts.—Proof of Will of Registered Owner.*

The owner of freehold registered land, conveyed to him under the Purchase of Land (Ireland) Acts, died, having made a will which had not been proved. His two sons claimed to be registered in respect of the land as £5 rated freeholders in succession to their father, and sought to prove their title by tendering their father's will in evidence, and proving it by the evidence of an attesting witness. The Revising Barrister held that no evidence of the contents of the will could be given till probate had been obtained and a personal representative raised pursuant to s. 84 of the Local Registration of Title (Ireland) Act, 1891 (2), and refused to admit the claims.

Held, that the decision of the Revising Barrister was correct.

Lynch v. Harper (1908, No. 13); [1909] 2 Ir. R. 53.

The case was stated by the Revising Barrister (J. M'Gonigal) as follows:—

The names of Hugh and Charles Lynch appeared on the Claimants List of the Registration Unit of Maghernageeragh, Polling District of Castlederg, Parliamentary Division of North Tyrone, as £5 or £20 joint rated freeholders, in succession to their father, deceased, and were duly objected to by Robert Harper.

The following facts were proved:—

The necessary evidence of value was given. The premises out of which the claimants claimed was a farm.

It was proved that the father of the claimants had been the registered owner (under the Local Registration of Title (Ireland) Act, 1891) of the farm, which

(1) 13 & 14 Vict., c. 69, s. 2.

(2) 54 & 55 Vict. 66, s. 84.—“Where any such land is vested in any person without right of survivorship to any other person, it shall on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time as if it were a chattel real vesting in him or them.”

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he had bought under the Ashbourne Act, and that the annuity was still payable to the Land Commission. The claimants then attempted to prove a devolution of their father's property to them by tendering in evidence their father's will, which had not been proved. They called one of the witnesses to the will to prove its execution, and his evidence, if admissible, was sufficient to prove the due execution of the said will. The objector objected to this evidence being received.

I held that, as under the 84th section of the Local Registration of Title (Ireland) Act, 1891, the lands vested in the personal representative of the father of the claimants, I could admit no evidence of the contents of the will until it had been proved and a personal representative raised. I accordingly refused to admit the claims of the said Hugh and Charles Lynch, and struck out their names. If I was wrong in so holding, the names of the said Hugh and Charles Lynch are to be admitted.

O'Brien, K.C., and Dougherty for the appellants.

S. 84 of the Local Registration of Title Act does not make the land personalty, and it has no application to a case like the present, where a person is not seeking to prove his title to the land, but is merely claiming the franchise, for which purpose lawful occupation is sufficient. Until the will is proved, the heir-at-law holds the estate in trust for the devisees. Even a will of personalty before probate confers certain rights. *Terlin v. Gilsenan* (1). Occupation without title, e.g., under an instrument void at law, may confer the franchise. *Glenn v. Brennan* (2). Upon the purchase under the Land Law (Ireland) Act, 1896, the land was vested in the purchaser in fee simple, ss. 31, 32. Clear occupation as tenant, though not having any title as tenant, (*Fogarty v. Shanahan* (3)) is sufficient for the franchise. *Roulston v. Kerlin* (4). Though the land devolves as personalty, it remains real estate.

Babington for the respondent.

The claimants are trying to prove devolution of the estate from their father, not to show occupation. They claim as freeholders under s. 2 of the Act of 1850, not as tenant or owner, under s. 3 of the Act of 1867, so the cases cited do not apply. To establish their claim they must show that they "are

(1) [1902] 1 Ir. R. 214.
(3) [1896] 2 T. R. 275.

(2) 29 I. L. T. R. 79.
(4) [1908] 2 Ir. R. 295.

seised of or entitled to for their own use to an estate in fee simple in lands rated at the net annual value of £5 or upwards.' The only question is, was there any proof of title. Under s. 84 (1) of the Local Registration of Title (Ireland) Act, 1891, the registered land devolves on the personal representative, will or no will, as if it was a chattel real. By s. 85 the beneficial interest, in the case of intestacy, devolves as if it was personal estate; by s. 86 the rules of law as to the effect of probate as regards chattels real, and as respects the dealing with chattels real before probate, apply to registered land; s. 87 provides for the assent of the personal representative to any devise in the will of the deceased owner, and if he does not assent the person entitled under the will can apply to have himself registered as owner. If the person named as personal representative in the will declines to take out probate, any party entitled under the will can apply for a grant of administration with the will annexed. The Revising Barrister was right in requiring production of probate of the will.

O'Brien, K.C., in reply.

There is an inchoate title as long as there is possession. Possession is evidence of seisin in fee. S. 84 only applies where a personal representative is raised. The equitable estate is in the devisees. The operation of a devise of registered land is not postponed till the devisee is registered as owner. *Torish v. Orr and Smith* (1). If the objector's contention is right, supposing litigation about the will took place, the franchise might remain in abeyance for years.

Lord O'Brien, L.C.J.—We have considered this case, having regard to the provisions of the Local Registration of Title Act. I do not think that the way I suggested of arguing the case, that is, looking at the claimants as persons in possession, and dealing with possession as evidence of seisin in fee is open on the case stated. The point stated for our determination is the construction of s. 84 of the Local Registration of Title Act. Now, in my opinion, the will cannot be looked at at all. The claimants sought to prove the execution of the will by witnesses. I do not think the will can be looked at, except in the hands of the personal representative, that is to say, until probate has been taken out. It is not, in my opinion, necessary to go beyond the first clause of s. 84. It provides: "Where any such land is vested in any person," etc., 'it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in the personal representative as if it were a chattel real vesting in him or them.' It is a

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condition necessary to the ascertaining who the personal representative is, that probate should be taken out, or administration with the will annexed granted. The title devolves through the personal representative. Here we are shut out from the will, as there is no probate or administration with the will annexed. It is not necessary, as I said, to refer to any part of the Act except sub-sec. 1. of s. 84; but I think, however, that the fifth sub-section of s. 84 entirely bears out the view I have taken. It shows that the devolution of the legal interest is through the executor or administrator, as the case may be. It provides "that probate or administration may be granted of such land only, although there is no personal estate."

FitzGibbon, *L.J.*—The question before us is conversant only with the evidence admissible to prove the devolution of title to freehold registered land. Can the devolution of title to a freehold, on the death of a registered owner, be proved when there is no personal representative? The Act 54 and 55 Vict., c. 66, s. 84 (1) expressly enacts that "on the death of the registered owner of freehold registered land it shall on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representative as if it were a chattel real." There may be no personal representative; and in the case of intestacy there can be none until administration is taken out. In the case of an owner of realty only, e.g., of a registered owner of freehold land who had no personal estate, if he devised his realty without appointing an executor, there could not have been, or at least there need not have been, any probate or administration under the old law. Whether intentionally or not, the statute, by vesting the freehold in the personal representative as if it were a chattel real, necessitates the raising of such a representative, "notwithstanding any testamentary disposition"; and as the devolution of the title to a chattel real could not be proved except by production of probate or letters of administration, and could not be shown by proving the original will *per testes*, I hold that the effect of the Local Registration of Title Act is to make probate essential to the proof of the devolution of a registered freeholder. In my opinion, no other construction can give effect to s. 84, though this makes the taking out of probate or of letters of administration necessary in some cases in which, before the Act, it would not only have been unnecessary, but might have been impossible.

Holmes, *L.J.*—I concur. The Revising Barrister took the view that the right to vote depended on the claimants showing title to the farm in their possession. I take the same view. It was shown before the Revising Barrister that the lands had been purchased by a registered owner; that he died and made a will. If that will could have been proved before the Revising Barrister he would have held the claimants entitled to the franchise; so the whole case turned on the will. The way it was proposed to prove the will was by one of the attesting witnesses. It is said that the effect of the Local Registration of Title Act is to place registered land of this kind in the same position as regards devolution under a will as chattels real; and very elaborate provisions are found in the Act showing that this was the intention of the legislature. Section 86 (2) is a remarkable provision that, before probate or letters of administration are taken out, the same rules of law apply to such land as are applicable to chattels real. Before the passing of the Act, chattels real on the death of the owner would vest in his executor, if there were an executor; and, if there were no executor, would vest in the Judge of the Court of Probate. S. 84 (5) is of great importance. FitzGibbon, *L.J.*, has called attention to the fact that the ordinary law is that on the death of a person seised of real estate only letters of administration cannot be obtained unless he has also some personal estate. Sub-sec. (5) is an express provision that administration may be obtained under such circumstances. All these things show us that so far as regards deducing title it must be done in the same way as in the case of chattels real; and the necessary evidence could not be given in this case by reason of the fact that no probate or letters of administration had been obtained.

Notice of Objection.

Old Lodger List—Objection by Overseers—Duty of Overseers to appear—Direction by Revising Barrister to Overseers—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict., c. 26), s. 22; s. 28 (9, 10, 11).

Overseers objected to the claim of an old lodger by adding in the margin of the list opposite the name the words "objected to." They did not appear in support of their objection; the claimant did not appear personally, nor was any evidence given or

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Cartwright v. Town Clerk of Shrewsbury. tendered on his behalf, but he was represented by an agent. The Revising Barrister struck out the name on the ground that as the objection was by the overseers, and the claimant had not proved that he was entitled to have his name inserted in the list, he was bound under the provisions of 41 & 42 Vict., c. 26, s. 28 (11) to do so.

The Court held that, as the overseers did not appear in support of their objection, the Revising Barrister should have retained the name. (*Cartwright v. Town Clerk of Shrewsbury* [1909] 2 K.B. 169.)

This was a case stated by the Revising Barrister for the borough of Shrewsbury in obedience to an order of the Court directing him to state a case.

At a Court held on September 11th, 1908, for the revision of the list of voters for the borough of Shrewsbury, the appellant claimed, as a person already on the lodgers' list on the existing register, that his name should be inserted in the lodgers' list for the Quarry Ward polling district (parish of St. Chad), in the borough.

The claim of the appellant, with the usual declaration attached thereto, was received by the overseers of the parish on or before July 25, 1908, and the appellant's name was included by them in the list of persons so claiming, which list the overseers signed and published on or before July 31st, 1908. Before signing and publishing the list the overseers objected to the claim of the appellant by adding in the margin of the list, opposite the appellant's name, the words "objected to."

When the list came on before me (the Revising Barrister) for revision at the Court, the appellant did not appear personally, nor was any evidence of any kind given or tendered before me on his behalf; but it was argued on his behalf by the party agent who supported his claim, firstly, that under the provisions of the Parliamentary and Municipal Registration Act, 1878, s. 28, sub-s. 9, I was bound to retain the appellant's name upon the list unless the overseers appeared by themselves or by some person on their behalf in support of their objection; secondly, that the ground of the objection was not stated; and, thirdly, that the objection was not, so it was alleged in argument, an objection by the overseers, but was one made by them by my instructions, and that the overseers had no reasonable cause for believing that the appellant was not entitled to be registered.

I decided against the appellant on all the above points. As to the first point, I so decided because it appeared to me that s. 28, sub-s. 9, of the statute is expressly made subject to the other provisions of that statute, and therefore to the provisions of sub-ss. 10 and 11 of the same section; and because the purpose for which sub-s. 9 requires the appearance of an objector is that he shall support his objection, which, by sub-s. 10, it is unnecessary for overseers who have made an objection to do.

I decided the second of the above points against the appellant, because it appeared to me that s. 22 of the statute has provided the form in which overseers shall make their objection in such cases as the appellant's; and has further provided that where the overseers have followed this form, as they did in this case, the person objected to shall be deemed to be duly objected to.

And I decided the third of the above points against the appellant, because I was of opinion that, apart from the question of evidence or no evidence, I was bound by the concluding words of s. 22 of the statute to treat the objection made by the overseers as an objection duly made; and further because no evidence of any kind was given or tendered in support of the allegations made in the argument as above stated; the party agent appearing on behalf of the appellant informing me that he declined to call any evidence; that he had advised the appellant not to appear, and that he rested the case solely upon the appellant's claim, and the declaration attached thereto, and upon the arguments above cited.

This third point appears to be that intended to be raised for the appellant's notice of appeal. Such notice, however, assumes facts of which, as before stated, no evidence was given before me, and moreover, does not correctly state the grounds of my decision. And since the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict., c. 18), s. 42, only permits me to state the facts which according to my judgment have been established by the evidence in the case, and which shall be material to the matter in question, I would venture to submit to the Court that it is not possible for me to state any facts which might raise the above point as one of law for decision by the Court; more especially as it now appears from the affidavits, other than my own, which were made respectively in support of and opposition to the rule for a mandamus, that if evidence on this subject had been given in the revision court, I might have had to decide upon a conflict of testimony. But should the

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Cartwright v. Town Clerk of Shrewsbury. Court be of opinion that it is open to me to do so, I would ask permission to state here the following facts, which are within my own personal knowledge, and which, although no evidence of them was given before me in the revision Court, are deposed to by me in my affidavit used in opposition to the rule for a mandamus. These facts are as follows:—That at the close of the revision of the list for Shrewsbury by myself in the year 1907, I called the overseers' attention to their duty as laid down by the said statute in respect to objecting to the claims of persons appearing on the "old" lodger list, and whom the overseers had reasonable cause to believe were not entitled to be registered. I then told the overseers that in my opinion, as matter of law, they had such reasonable cause in cases where the parties were parent and son or master and servant, and I told them that they must object in such cases, meaning that it was their duty to do so. I did not mean, nor have I any reason to suppose that overseers understood me as meaning, that the overseers were bound to object even in cases where they knew or had reasonable grounds for believing that the claims were good. And I further told them that they might throw the odium and responsibility for their so acting on myself if they were attacked by any claimant or by any other person in consequence of their having made such an objection.

After deciding as above stated the points raised in argument on behalf of the appellant, I called upon him by name, but he did not answer, and I was informed by the agent that he was not present.

It appeared to me, therefore, that the objection being by the overseers, and the appellant not having proved by himself or by any person on his behalf that he was entitled on the last day of July, 1908, or at all, to have his name inserted in the list, I was bound, under the provision of the Parliamentary and Municipal Registration Act, 1878, s. 28, sub-s. 11, to expunge the appellant's name from the list, which I accordingly did.

I also expunged from the list the names of twenty-nine other persons under the same circumstances, *mutatis mutandis*, and for the same reasons as those above stated in the case of the appellant Cartwright. The names of the said persons appear in the schedule hereto, and I have consolidated the cases of these twenty-nine persons with that of the appellant.

If the Court shall be of opinion that my decision was wrong, the register is to be amended by inserting

the name of the appellant Cartwright in the lodgers' list for the parish of St. Chad, polling district No. 1, and the names of the other appellants in the like list for the respective parishes and polling districts set opposite their names respectively in the schedule hereto.

Sir R. B. Finlay, K.C. (Coward, K.C. and Daldy with him) for the appellant.

As to (1), there was no power to expunge the name, as the overseers did not appear in support of their objection. The provision in s. 28 (9) of the Act of 1878, that the Revising Barrister must retain the name of any person not objected to, and also the name of every person objected to "unless the objector appears by himself or by some person on his behalf in support of his objection" applies to all objectors, whether overseers or not. As to (2), in one sense the overseers need not state the ground of their objection, because an objection by them is valid if they write the words "objected to" opposite the name. S. 22 of the Act of 1878. But in practice if overseers appear in support of their objection they either state, or they can be asked to state, the nature of their objection. As to (3), the overseers must have reasonable cause to believe that the name ought not to be on the list. They should not object merely because the Revising Barrister tells them to do so. The Revising Barrister was wrong in giving the direction he did. *Major v. Town Clerk of Shrewsbury* (1).

The respondent did not appear.

Lawrance J.—The main question which is raised here, and which is decisive of the whole case, is whether an overseer, who makes an objection to a person who has sent in a claim and whose name has been placed on what is called the old lodgers' list, is bound to appear either by himself or by some one representing him at the Revising Barrister's court in support of his objection, or whether all that is necessary is that he should write in the margin of the list, opposite the name of the person, the words "objected to." It seems to me that by s. 28, sub-s. 9, of the Parliamentary and Municipal Registration Act, 1878, every objector, whether he is an overseer or not, is bound to appear in support of his objection, inasmuch as that sub-section provides that "subject as herein and otherwise by law provided, the Revising Barrister shall retain the name of every person not objected to and also of every person

Cartwright v. Town Clerk of Shrewsbury objected to, unless the objector appears by himself or by some person on his behalf in support of his objection." Those words are as wide as possible, and no distinction is drawn in that sub-section between an ordinary objector, if I may so call him, and an overseer objector. But when, in sub-ss. 10 and 11, the section proceeds to deal with the course to be pursued by the Revising Barrister when the objector appears in support of his objection, a distinction is at once drawn between the two. That seems to me to dispose of the whole of the case, and makes it unnecessary to go into the other questions which were raised before the Revising Barrister. But I should like to add a word or two upon the third point, namely, whether this was a good objection by the overseers. That is a question which it is not necessary for us to decide, but I may say this. Before an overseer is entitled to object to a person who has sent in a claim as an old lodger, and whose name is entered on the list, he must, by s. 22, "have reasonable cause to believe" that that person is not entitled to be registered, and if he has such reasonable cause he is to write the words "objected to" in the margin of the list opposite his name. The Revising Barrister in the present case, at the close of the lists for Shrewsbury in 1907, seems to have called the attention of the overseers to their duty as to making objections to the claims of persons appearing on the old lodgers' list and to have given them the following direction: "I then told the overseers that, in my opinion, as matter of law they had such reasonable cause in cases where the parties were parent and son, or master and servant, and I told them that they must object in such cases." The plain meaning of that direction is that in every case of father and son, or master and servant, no matter what information the overseers may possess, they have, in law, reasonable cause to believe that the claimant is not entitled to be registered, and that they are to object. The effect of that direction would be to throw the burden upon every lodger who happened to be a son or a servant of the landlord, of attending at the Revising Barrister's court to substantiate his claim, and to meet any objection which might possibly be made against his right to be on the register. That alone is sufficient to make it doubtful whether the overseers in the present case had reasonable cause to believe that the appellant was not entitled to be registered as required by s. 22. It is, however, unnecessary to decide that, because the first point is sufficient to decide this case. In my opinion the appeal must be allowed.

Walton J.—. . . . The first contention before the *Cartwright v. Town Clerk of Shrewsbury.* Revising Barrister was that under the provisions of s. 28, sub-s. 9, of the Parliamentary and Municipal Registration Act, 1878, the Revising Barrister was bound to retain the appellant's name upon the list, unless the overseers appeared by themselves or by some person on their behalf—which they had not done—in support of their objection. That is the main question which arises upon this appeal, and practically it is the only question which we have to determine. The answer to that question depends upon the construction of s. 28, subss. 9, 10, and 11, of the Parliamentary and Municipal Registration Act, 1878. Sub-s. 9 is to this effect: "Subject as herein and otherwise by law provided, the Revising Barrister shall retain the name of every person not objected to, and also of every person objected to, unless the objector appears by himself or by some person on his behalf in support of his objection." That is a general direction given to the Revising Barrister to retain the name of a person objected to by an overseer or by any other person, unless the overseer or other person appears either by himself or by some person on his behalf in support of his objection. The overseers in the present case did not appear in support of their objection. Therefore it would seem, taking that sub-section alone, that the Revising Barrister ought to have retained the appellant's name on the list, and had no right to strike it off. The Revising Barrister, however, in his decision says that that sub-section must be read subject to the provisions of subss. 10 and 11. I think that the three sub-sections are reasonably clear, and naturally follow each other. By sub-s. 9 the name of the person objected to is to be retained on the list unless the objector appears. I cannot find anything in either sub-s. 10 or sub-s. 11 which alters that so as to dispense with the appearance of the objector, whoever he may be, and which allows the Revising Barrister to expunge the name although the objector does not appear. It seems to me that the words at the beginning of sub-s. 10 negative that contention, and show that sub-s. 9 stands absolutely untouched. The sub-section begins "If the objector so appears," and it then proceeds to state what is to be done when the objector appears; and sub-s. 11 seems to be merely consequential on sub-s. 10. Sub-s. 9 does not say "unless the objector not being an overseer appears;" nor does sub-s. 10 use the words "If the objector, not being an overseer, so appears." By sub-s. 10, if the condition as to appearance is fulfilled, then the Revising Barrister shall require the objector, unless

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he is an overseer, to prove the notice of objection, and to give *prima facie* proof of the ground of objection. An overseer is not required to prove these things. Clause 2 of sub-s. 10 may seem at first sight to raise a difficulty, but it really does nothing of the kind. It enacts that "an objection made under this Act by overseers shall be deemed to cast upon the person objected to the burden of proving his right to be on the list." That forms an essential step in the scheme of these sub-sections. The overseers, if they have objected and appeared in support of their objection, have done all that is required of them. They are not required to prove anything, and in such a case the burden of proving his right to be on the list is thrown upon the person objected to. We are asked to read this clause as if it ran "an objection made under this Act by overseers whether they appear or not." I see no reason for the insertion of these words. Sub-s. 11 is in the following terms: "If such proof is given by the objector as herein prescribed, or if the objection is by overseers, then unless the person objected to appears by himself, or by some person on his behalf, and proves that he was entitled on the last day of July then next preceding to have his name inserted in the list in respect of the qualification described in such list, the Revising Barrister shall expunge the name of the person objected to." That provision, when properly understood, works in with the other two sub-sections. The words "as herein prescribed" refer back to the provisions of sub-s. 10, and the words "or if the objection is by overseers," merely secure the privilege which sub-s. 10 gives to overseers of not being required to give evidence in support of an objection made by them. Sub-s. 11 means that if proof is given in accordance with sub-s. 10 by the objector who is not an overseer, or if the objector is an overseer, then, unless the person objected to appears by himself or by some person on his behalf and proves that he is entitled, his name shall be expunged from the list. The sub-sections read naturally and clearly, and the effect is that overseers may object to a name by writing the words "objected to" in the margin of the list opposite the name, but, unless they appear either by themselves or by some one on their behalf in support of their objection, the objection falls to the ground, and the Revising Barrister cannot expunge the name, but must, under the provisions of sub-s. 9, retain the name as if it had not been objected to. The appeal therefore succeeds upon this point.

The second contention was that the ground of objection was not stated. If that means that the ground of objection must be stated in the overseers' written objection opposite to the person's name, that is clearly not necessary. If on the other hand it means that the overseers did not appear, and so did not put themselves in a position to state what was the ground of their objection, if they were asked to do so, then it seems to me to be only another way of stating the first contention.

The third contention was that "the objection was not, so it was alleged in argument, an objection by the overseers, but was one made by them by" the Revising Barrister's "instructions, and that the overseers had no reasonable cause for believing that the appellant was not entitled to be registered." To my mind we cannot deal with that as a separate point. We have no materials before us which will enable us to say whether that contention is well founded or not. It is sufficient to say that by s. 22 the overseers must themselves, before objecting to a person whose name is on the list, have reasonable cause for believing that the person is not entitled to be registered. They may act upon the advice of the Revising Barrister as to the law, but they must themselves have reasonable cause for believing that the person is not entitled to be registered before writing the words "objected to" in the margin of the list opposite the name. If the overseers here wrote the words "objected to" in the margin opposite the appellant's name simply because they were told to do so by the Revising Barrister, without exercising their own minds upon the matter, that would not be a good objection. It is difficult to determine upon the facts whether the overseers acted upon their own discretion or whether they acted upon the direction of the Revising Barrister. The materials are insufficient to enable us to deal with this point. The appeal therefore succeeds upon the first point.

Jelf J.—I am of the same opinion. The case lies within a very narrow compass, and depends entirely upon the construction of s. 28, sub-ss. 9, 10, and 11, of the Act of 1878. The effect of those three subsections is, to my mind, perfectly clear. With regard to an objection made to a name on a list by what I may call an ordinary objector, that is, by a person who is not an overseer, before the person objected to can be put upon his defence and called upon to prove anything, three conditions must be complied with. First, there must be an objection properly made; secondly, the objector must appear

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Cartwright v. Town Clerk of Shrewsbury before the Revising Barrister, either by himself, or by some person on his behalf, in support of his objection; and, thirdly, the objector must prove that he gave the notice of objection, and he must give *prima facie* proof of the ground of his objection. With regard to an objection made by an overseer, there are only two conditions to be complied with before the person objected to is called upon to defend his right to be registered. First, the overseer must make an objection; and, secondly, he must appear before the Revising Barrister, either by himself, or by some person on his behalf, in support of his objection. If both these conditions are fulfilled, then the person objected to must appear and support his claim. The opening words of sub-s. 9, "Subject as herein and otherwise by law provided," fit in with the rest of the section, and the wording of subss. 10 and 11 shews quite clearly that the appearance of the overseer, when he makes an objection, is necessary, though when he has appeared the person objected to must then be prepared to prove that he is entitled. Therefore upon this point the decision of the Revising Barrister was wrong. With regard to the direction which the Revising Barrister has told us that he gave to the overseers, I can well understand that there may be many cases in which the relationship of parent and son and master and servant lead to improper lodger claims which ought not to be allowed to pass, and no doubt the intention of the Revising Barrister was to warn the overseers to be careful in the exercise of their discretion under s. 22, and not to let any claims as to which they had reasonable grounds for believing that they were bad to pass unopposed. But I think that the Revising Barrister here has gone too far in what he said to the overseers, though I can quite appreciate the fact that in order to keep the register pure he thought it desirable to give some warning to the overseers.

Power of Amendment.

Description of Qualifying Premises.—Power to Amend.—Premises occupied in succession.—Striking out Premises.—Parliamentary Registration (Ireland) Act, 1885, c. 17, s. 4.

M'Laughlin v. Swan (County of Tyrone). The qualifying premises of a person on the supplemental list of inhabitant occupiers were described in one case as "Castletown from Castletown," and in another case as "Asylum, Cranny, from Mulaghmore." Each was objected to on the ground

that he inhabited the same house, viz., in Castletown and in the Asylum) during the whole of the qualifying period, and this was established in evidence.

The Revising Barrister held that he had power to amend the description of the qualifying premises by striking out the words "from Castletown" and "from Mullaghmore," and retained the names on the list.

The Court being of opinion that no one was misled or prejudiced, and that the mis-description was made bona fide, following *Gillespie's Case*, 1 Lawson, 327, held that the Revising Barrister had power to amend, and affirmed his decision. *M'Laughlin v. Swan; Same v. Bates* (1908, Nos. 2 and 5); [1909]; 2 Ir. R., 48.

The cases were stated by Sir F. W. Brady, County Court Judge for the County of Tyrone, as follows:—

M'Laughlin v. Swan.

The name of Thomas Swan appeared as Number 8 on the Supplemental List of Householders, Form Number 12, for the Unit of Gortgranagh, Mid-Division of the County of Tyrone, and the description of the qualifying premises in the fifth column was "Castletown from Castletown." The said Thomas Swan was duly objected to by Patrick M'Laughlin on the ground that he had not occupied premises as a householder in Castletown in succession from other premises in Castletown during the qualifying period.

The facts which were established by the evidence in the case which was given before me on the 16th day of September, 1908, were as follows: The said Thomas Swan had resided two years in one house in Castletown, and had not removed during the qualifying period. The said Thomas Swan gave evidence, and stated that he had resided in the same house for the past two years or thereabouts, and had not removed during that time. The requisition on which his name was returned to the Clerk of the Union by him, or on his behalf, was produced, and was found to correspond with the description of the qualifying premises on the list.

It was submitted on behalf of the objector that the description of the qualifying premises was bad, and could not be amended. A solicitor in court who represented the said Thomas Swan argued that the words "from Castletown" were superfluous and

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M'Laughlin v. Swan. immaterial, and that if any amendment was necessary I had power to amend by striking out the said words.

I accepted this view, and would have struck out the words denoting succession, namely, "from Castletown" if I thought it necessary. I retained the name of the said Thomas Swan on the list.

If the Court be of opinion that my decision was wrong the register is to be amended by expunging the said name therefrom.

M'Laughlin v. Bates.

M'Laughlin v. Bates. The name of Samuel Bates appeared as Number 2 on the Supplemental List of Householders, Form Number 12, for the Unit of Killyclogher, Mid-Tyrone Division of the County of Tyrone, and the description of the qualifying premises was stated in the fifth column as "Asylum, Cranny, from Mullaghmore." The said Samuel Bates was duly objected to by Patrick M'Laughlin on the ground that he had not been a successive inhabitant occupier during the qualifying period.

The facts which were established by the evidence in the case which was given before me on the 16th day of September, 1908, were as follows:—Samuel Bates is an attendant in the Omagh Asylum, and in that capacity has resided in the Asylum for the past two years or thereabouts, and he occupied no dwellinghouse in Mullaghmore during any part of the qualifying period. The voter himself was examined, and stated that he has been about two years in the Asylum as attendant, and occupies rooms, and sleeps there, and that it is about two years since he ceased to reside in Mullaghmore.

It was submitted on behalf of the objector that the description of the qualifying premises was bad, and could not be amended by striking out the words "from Mullaghmore." A solicitor in court who represented the said Samuel Bates argued that the words "from Mullaghmore" were superfluous and immaterial, and that if it was necessary to amend I had power to do so by striking out those words.

I accepted this view, and amended the description of the qualifying premises accordingly, and retained the name of the said Samuel Bates.

If the Court be of opinion that my decision was wrong the register is to be amended by expunging the name of the said Samuel Bates therefrom.

Ignatius O'Brien, K.C., and Muldoon for the appellant.

The description in the list in each of these cases *M'Laughlin v. Bates*. was of a successive occupation. Succession was an essential element of the qualification as described, and if that description was erroneous it could not be amended at the Revision Sessions, so as to create a wholly different qualification, even though the true qualification, if it had been originally described properly, might have entitled the person to the franchise. A mistake of this kind cannot be amended, for the amendment would substitute a qualification totally different from that appearing in the list. *M'Combe v. Buchanan* (1); *Foskett v. Kaufman* (2). The amendment, if it can be made at all, must be brought within s. 4 of the Parliamentary Registration (Ireland) Act, 1885 (48 and 49 Vict., c. 17), and the statutory power to amend does not apply where the effect of the amendment would be to admit the voter under a qualification in its essence different from that which was in the first instance claimed or described. *Cullen v. Patterson* (3)—one of the earliest cases on this subject. *Wilson v. Buchanan* (4) is an authority to that effect. All the previous cases were cited. *Gillespie's Case* (5) has always been disapproved of.

Holmes, *L.J.*, referred to *Quinn v. Buchanan* (6); *Hurcum v. Hilleary* (7); *Soutter v. Roderick* (8).

There was no appearance for the voters.

Lord O'Brien, *L.C.J.*—We have considered these cases, in both of which the same question arises. *Gillespie's Case* (5) was decided by this Court, and no subsequent decision has purported to overrule it. No doubt it has been criticised, but there it is. I myself consider that *Gillespie's Case* (5) was satisfactory, because it furthered the power of amendment. I think it would be a painful scandal in the administration of the law if a man who has a right to vote should through a misdescription such as this be deprived of the franchise. *Gillespie's Case* (5) decided that if an objection is taken to a name appearing in the list, and it appears in the investigation of the voter's claim to be returned that he was entitled to another franchise, the matter may be amended. But there is this condition, that the evidence must be relevant to the claim as originally stated in the list. I referred to that in *M'Combe v. Buchanan* (1).

(1) 2. L. 42. (2) 16 Q. B. D. 279. (3) 18 L. R. Ir. 274. (4) 20 L. R. Ir. 213. (5) 1 L. 327. (6) 1 L. 309. (7) [1894] 1 Q. B. 579. (8) [1896] 1 Q. B. 91.

M'Laughlin v. Bates. Was the evidence here relevant to the qualification as stated? Dealing with it as a succession claim, suppose a man comes forward to make his claim, would it not be relevant to ask him: Did you occupy a house at a certain place, and how long were you there? But then the whole question would arise. He answers: I occupied the place for a whole year. That would be relevant to the first claim. I am prepared to say that what the Revising Judge did was right in principle and supported by authority. I repeat that I am satisfied with *Gillespie's Case*, because I think it worked out justice. The broader the power of amendment is the better, if there is no *mâfâides*, and no one is prejudiced. No one is prejudiced here.

FitzGibbon, *L.J.*—The first case will be amended by striking out the words “from Castletown,” and the second by striking out the words “from Mullaghmore.” I am glad that the Court has come to the conclusion that this can be done, and I hold that the evidence which was given, and which showed that the voter occupied the first-mentioned premises during the whole of the qualifying period, was not irrelevant. When given it entitled him to the franchise. Mr. O'Brien's contention was that he could not get the franchise unless he went on to prove that he had ceased to occupy those premises, and had gone into occupation of other premises before the end of the qualifying period. There was nothing misleading, and *Gillespie's Case* applies. In *Quinn v. Buchanan* it was held that where a successive claim described the claimant as having occupied A, B, and C in succession, and the evidence showed that he never had occupied C, but had occupied A and B for the whole year, the Revising Barrister had power to amend by striking out C. Without trying to reconcile *Quinn's* and *Gillespie's Cases* with *M'Combe v. Buchanan*, I think that the principle of *Gillespie's Case* was correct, and that this case comes within it.

Holmes, *L.J.*—*Gillespie's Case* was decided more than twenty years ago, and in the interval I doubt if any case has been more frequently mentioned to the Court; and on each occasion when it was mentioned the members of the Court have stated that they were perfectly satisfied with the decision. Coming to this case, it is impossible to hold, having regard to *Gillespie's Case*, that the amendment could not be made, and that the claimant was not entitled to the franchise. I quite admit that it is difficult

to reconcile *M'Combe's Case* with *Gillespie's Case*. *M'Laughlin v. Bates.* It is suggested that they can be reconciled on the ground that in *M'Combe's Case* the evidence was not relevant to the claim as stated in the list; but here the evidence was relevant to the claim as made.

Revising Barrister, Duty of.

Prima facie Proof of Ground of Objection—Household Franchise—Residence of Landlord in House—Evidence as to Houses similarly occupied—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict., c. 26), s. 28 (10).

Certain persons on the occupiers' list for a borough objected on the ground that they had not occupied *Kent v. Fittall* (No. 3). objected on the ground that they had not occupied as owner or tenant the premises named in the list for twelve months preceding July 15th in the year.

The objector proved as to each of the persons objected to, (1) that the dwellinghouse formed part of a house which was itself a house of the description known as an ordinary dwellinghouse; (2) that the landlord to whom he paid rent also resided in the house; and (3) that the landlord was rated and paid the rates for the whole house as a separate tenement. The Revising Barrister then examined the assistant overseer and the registration clerk for the borough as to the conditions of letting, in the majority of cases in the borough, of houses of the same description as those occupied by the persons objected to:—

Held—That the Revising Barrister, if he believed that the proof of the three facts above stated applied to the particular house and occupation as to which the objection was taken, ought then to have inquired into the circumstances of the occupation in that particular case; he must not, as he had done, act upon general evidence with regard to the majority of houses similarly occupied in the borough, and he must therefore be directed to complete the revision.

It is always for the Revising Barrister to judge whether the evidence brought before him on behalf of the objector (which may not be strictly legal evidence) is *prima facie* proof or not of the ground of objection. *Kent v. Fittall* (No. 3) [1909], 1 K.B. 215.

Kent v. Fittall (No. 3). This was a case stated by the Revising Barrister for the Parliamentary borough of Devonport.

1. George James Kent, the appellant objected to the names of certain persons being retained on Division 1, of the occupiers' lists for the borough on the ground, in each case, "that you have not occupied as owner or tenant the premises named in the said list for twelve months preceding July 15th in this year."

2. The objector proved as to each of the persons—(1) that the dwellinghouse in respect of which he claimed to be placed on the list formed part of a house which was itself a house of the description known as an ordinary dwellinghouse; (2) that the landlord or landlady to whom such person paid rent also resided in the house; and (3) that the landlord or landlady was rated and paid the rates for the whole house as a separate tenement.

3. The objector submitted that on proof of the three facts mentioned in paragraph 2 the Revising Barrister was bound, as a matter of law, to hold that he had given *prima facie* proof of his ground of objection within the meaning of s. 28, sub-s. 10, of the Parliamentary and Municipal Registration Act, 1878.

4. The Revising Barrister thereupon examined, on oath, the assistant overseer and the registration clerk for the borough, and he found as facts that, in the cases where houses of the description referred to in paragraph 2 were occupied by others in addition to the landlord, the conditions of letting, in the great majority of cases due to the scarcity and consequent high rentals of separate houses suitable for the working classes, were, during the qualifying period, as follows:—

The person (hereinafter called the occupant) taking the part (hereinafter called the dwelling) occupied one or more unfurnished rooms, to which he had at all hours free access both from the street by means of a latchkey when the door was locked, and also from the interior of the house, and the landlord reserved to himself no right to fasten the door so as to prevent such free access; he had the sole and exclusive occupation of the dwelling; no services whatever were rendered to him by the landlord in the dwelling; the landlord had not by agreement, nor did he claim, the right to, nor in fact did he, enter the dwelling at any time, or exercise any act of control over it, and the landlord's residence in the house was under identically the same conditions as that of the occupant or occupants.

5. The objector did not establish or seek to establish *Kent v. Fittall* (No. 3).

6. The Revising Barrister then held that he was not bound, as a matter of law, on proof of the three facts set out in paragraph 2, to hold that the objector had given *prima facie* proof to his satisfaction of the ground of objection set out in paragraph 1.

7. Upon the facts set out in paragraphs 2 and 4 hereof he held that it had not been shown to his satisfaction that the objector had given *prima facie* proof of the ground of objection, and he therefore retained the names of the persons on the lists.

8. As it appeared to the Revising Barrister that the several appeals depended upon his decision, he ordered the appeals in all the cases to be consolidated.

9. If the Court was of opinion that his decision was wrong in point of law the Court was to direct the Revising Barrister to complete the revision.

Foote K.C. and *Daldy* for the appellant.

The Revising Barrister had no power to obtain facts rebutting the *prima facie* ground of objection. He was bound to say on proof of the three facts mentioned in paragraph 2 of the case, whether *prima facie* proof of the ground of objection had been given. All the rebutting evidence which he obtained from the assistant overseer was secondary evidence. *Kent v. Fittall* (1) shows that immediately the three facts mentioned in paragraph 2 of the case were proved there was *prima facie* proof of the ground of objection. The evidence given by the assistant overseer was evidence of repute which was inadmissible. *Kent v. Fittall* (No. 2) (2). They referred to *Douglas v. Smith* (3); *Hogan v. Sterrett* (4); *Bradley v. Baylis* (5); *Campbell v. Chambers* (6).

Dankwerts K.C. and *Ricketts* for the respondent.

Strict legal evidence is not necessary before the Revising Barrister either on the part of the objector or the person objected to. *Kent v. Fittall* (No. 2) (2). S. 65 of the Parliamentary Registration Act, 1843, shows that no appeal lies from a Revising Barrister on any question of fact or upon the admissibility of any evidence. It was for the Revising

(1) [1906] 1 K.B. 60. (2) [1908] 2 K.B. 933. (3) [1907] 1 K.B. 126. (4) [1886] 20 L.R. Ir. 344. (5) [1881] 8 Q.B.D. 195. (6) [1886] 20 L.R. Ir. 355.

*Kent v.
Fittall* (No.
2).

Barrister to say whether the three facts constituted in his judgment *prima facie* proof of the ground of objection. The evidence of the assistant overseer as to usage was admissible.

Foote K.C. replied.

Lord Alverstone *C.J.*. . . In the present case that which occurred shews, in my opinion, not only that the Revising Barrister put questions—not only that he examined—as to the proof that was given him, but that, as the result of the answers to the questions which he put, he acted upon that which he ought not properly to have taken into consideration. If all that we knew, was that the Revising Barrister, having had the evidence, or that attempted proof set out in paragraph 2 of the case before him, had come to the conclusion that he was not satisfied as to the proof, I am not sure that we could inquire into the matter further. But I think it right to say that after a very careful study of the authorities, I am not aware of any case in which it has been suggested that, assuming that those three facts are proved by the objector, and nothing more, the Revising Barrister is bound to retain the name objected to on the list of voters. It seems to me that it is quite possible that a case might arise where the Revising Barrister may state as a matter of fact that on the attempted proof of those three facts alone he was not satisfied. But, assuming that those facts are proved, as I understand the Revising Barrister to state that they were in the present case, I am not aware of any authority which suggests that the Revising Barrister is bound to allow the vote to remain. In *Kent v. Fittall* (1) it was decided that, where on evidence before him the Revising Barrister was satisfied that the landlord had no control over that part of the house in respect of which the franchise was claimed, the vote would then be retained, and that in cases governed by that state of facts all the names must remain on the list. In *Douglas v. Smith* (2) it was decided that those facts being proved, and it being attempted by answers to written questions to show that the landlord had no control, the Revising Barrister was not bound to act on the written representation so made to him, but was entitled to strike off the votes. In *Kent v. Fittall* (No. 2) (3) the decision of this Court and the Court of Appeal in *Douglas v. Smith* (2) was approved of and adopted.

(1) [1906] 1 K.B. 60.

(2) [1907] 1 K.B. 126.

(3) [1908] 2 K.B. 933.

If in the present case the Revising Barrister did not appear to me to have acted upon answers with regard to matters which were irrelevant and did not affect the question raised on the particular vote which was being objected to, I would not have interfered. But before I consider why in my judgment he has acted upon what was not matter which could properly be taken into consideration, I wish to make an observation upon the question as to the effect of the presence or absence of the landlord in the house. In my opinion there is no doubt about the law. In *Kent v. Fittall* (1) it was said in the Court of Appeal that the law was correctly stated in the judgments in this Court; and I desire to point out that Romer *L.J.*, in giving judgment adopted the language of Sir George Jessel *M.R.*, in *Bradley v. Baylis* (4). Sir George Jessel, *M.R.*, said: "I have been quite unable, so far as I am concerned, to frame an exhaustive definition. Some judges have tried to do so, and, in my opinion, they have failed; and I think it wiser and safer to say that the question whether a man is a lodger or whether he is an occupying tenant must depend on the circumstances of each case." It is now well established that the presence of the landlord who is living in the house is not conclusive; and, the judgment of Collins, *M.R.*, in *Kent v. Fittall* (1) shews, in my opinion, that while it is not conclusive it is a fact from which, under ordinary circumstances, the Revising Barrister would be entitled to draw a presumption of fact, and not a presumption of law. Collins, *M.R.*, said: "It is not disputed that in dealing with the occupation of part of a dwellinghouse, if the landlord is living in the house, that fact creates a presumption that the occupation of the other part is that of a lodger rather than that of an inhabitant occupier. But while that is the inference that may be drawn, it is not a necessary inference of law, and there is no authority that it is to be treated as conclusive." He then quotes with approval the judgment of Cotton *L.J.*, in *Bradley v. Baylis* (2). The judgments in *Kent v. Fittall* (1), *Douglas v. Smith* (3), and in many other cases seem to me to show that the circumstances of the particular case have to be inquired into.

Now what are the circumstances of this particular case?

They are that a person who claims as an occupier is objected to, and the question that has to be decided is whether or not he is occupying the part of the

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house, or the tenement, as a lodger or as an occupier. I cannot help thinking that a great deal of the difficulty in the present case arises from the fact that an attempt has been made—perfectly fairly, no doubt—to apply in Devonport different rules to those which are applied in other towns and districts in England. In my judgment, when we consider what the Revising Barrister states as being that upon which he acted, it is reasonably plain that he has not considered the circumstances of the particular house only, but he has considered the circumstances of a class of houses within which the particular vote under consideration might or might not fall. Paragraph 4 of the case commences with the statement "I thereupon examined on oath the assistant overseer and the registration clerk for the said borough." The Revising Barrister does not suggest he had any doubt of the truth of the facts stated in paragraph 2, namely, that the dwellinghouse was an ordinary dwellinghouse, the landlord residing in it, and being rated for the whole tenement. Those things being established, a presumption of fact was raised which required to be rebutted in the particular case. In other words, there was a case to be answered. I understand the meaning of paragraph 4 of the case to be as follows: "I ascertained by answers to questions which I put to the assistant overseer and the registration clerk that in a great majority of cases it would be established to my satisfaction that the landlord had no control, so that the governing fact would be decided in favour of the voter, as in *Kent v. Fittall*." In my judgment, the Revising Barrister in relying upon that examination was acting upon matters which went far beyond inquiry into the circumstances of the particular vote, or even the circumstances of the class of vote before him; certainly beyond the circumstances of the particular vote. The examination only related to the condition of letting in the great majority of cases. What that means, what the actual majority was, whether this particular house or the occupation by the person objected to and under discussion before the Revising Barrister would fall within that great majority or within the small minority, one has no means of judging. In my judgment, the mere statement of that which the Revising Barrister sets out in the case shows that he acted upon a presumption of fact, or supposed proof of facts, which went beyond the circumstances of the case which was under his consideration. It is useless to try to take short cuts as the Revising Barrister has attempted to do

in this case. It may be more difficult and may require further time, but, given that the state of things set out in paragraph 2 of the case is established and proved, in my opinion, if the Revising Barrister believes that the proof applies to the particular houses and the particular occupation as to which the objection is taken, he should then inquire into the circumstances of the occupation in that particular case; he must not act upon general evidence with regard to the majority of houses similarly occupied in the borough. In the present case there is nothing to shew that the answers given by the assistant overseer and the registration clerk related to the particular house in respect of the occupation of a part of which the vote was being considered. I am therefore of opinion that this appeal must be allowed, and that the case must go back to the Revising Barrister to complete his revision.

Walton, J.—I agree, and have little to add. The case raises a question of some considerable difficulty. We are enabled to deal with it, inasmuch as the Revising Barrister has very properly and fairly stated not merely his conclusion of fact as to whether there was *prima facie* proof, but also the reasons and matters which operated upon his mind and caused him to come to the conclusion at which he arrived, namely, that there was no *prima facie* proof of the ground of objection. We have to consider whether in taking those various matters into consideration he was acting correctly in point of law, and whether he has taken anything into account which he ought not to have taken into consideration in arriving at his decision. Sect. 28, sub-s. 10 of the Parliamentary and Municipal Registration Act, 1878, provides that if the objector appears he is to prove his notices, and to give *prima facie* proof of the ground of objection. It is rather important to observe that the word used in s. 28, sub-s. 10, of the Act of 1878 is "proof," not "evidence." The section there says that the Revising Barrister "for that purpose may himself examine and allow the objector to examine the overseer or any other person on oath touching the alleged ground of objection, and unless such proof is given to his satisfaction"—that is, to the satisfaction of the Revising Barrister—"shall, subject as herein and otherwise by law provided, retain the name of the person objected to." Sect. 28, sub-s. 11, of the Act of 1878 says: "If such proof is given by the objector as herein prescribed . . . then unless the person objected to appears . . . and proves that he was entitled

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Kent v. Fittall (No. 3). . . . to have his name inserted in the list," his name is to be expunged. So that if the Revising Barrister comes to the conclusion that there is *prima facie* proof of the ground of objection, the result is, not that the person objected to has his name expunged, but only that he has to appear and meet the objection. The question in the present case is, in substance, whether the person objected to ought not to have been called upon to meet the objection which had been raised.

Now it has been said in effect in many of the authorities, to which I need not refer, that if the facts which the Revising Barrister has found in paragraph 2 of the case exist, there arises a strong presumption that the person objected to is a lodger and not an occupier—a presumption upon which the Revising Barrister may act, and which he may accept as sufficient *prima facie* proof of the ground of objection. In my opinion it must always be for the Revising Barrister to judge whether the evidence brought before him on behalf of the objector—which may not be strictly legal evidence—amounts to satisfactory *prima facie* proof or not. The Revising Barrister has to decide that question. In the present case the Revising Barrister has said in effect: "True, the facts stated in paragraph 2 of the case by themselves raise the presumption that the person objected to is not an occupier, and that the landlord of the house retains some control over the rooms occupied by the person objected to. That is true. Still, that is only a presumption which may be rebutted. I find from the evidence which was given that in the town of Devonport it is a very usual thing, in the case of houses which are occupied by the landlord and lodgers under the conditions set out in paragraph 2 of the case, for the landlord not to retain any control, and it is so usual that I think it rebuts the presumption in this particular case which would naturally be drawn from the facts set forth in paragraph 2 of the case."

The question is whether the Revising Barrister had any right, in dealing with the particular person objected to, to look at what was a very common mode of occupation in other houses in Devonport. Lord Alverstone *C.J.* has come to the conclusion, in which I entirely agree, that in looking at the way in which other houses were occupied by landlords and (I will call them) lodgers, he was going outside the range of the particular inquiry before him, which related to the relations between the landlord and the person objected to in the particular house in question. For that reason, not because he asked questions (for I

think he had a right to do that), but on the ground that he has acted upon evidence in respect of matters which were, I think, irrelevant to the particular inquiry which he was holding, and upon that ground only, I am of opinion that he must complete the revision.

Sutton J.—Against the objector the Revising Barrister admitted the evidence set out in paragraph 4 of the case. In my opinion, on the true construction of s. 28 of the Parliamentary and Municipal Registration Act, 1878, he was not at liberty to do that. That appear to me to be the view taken in *Kent v. Fittall* (No. 2) (1).

Kent v. Fittall (No. 2).

This case (as was stated in the Preface to Notes of Decisions for 1907 of 3 Lawson, Part VII) was decided by the Court of Appeal in England on July 22nd, 1908, too late to be included in that publication. It has since been reported, in [1908] 2 K.B. 933, and in 2 Smith's Reg. Cases 63.

It arose on the question of *prima facie* proof of the ground of objection to 1,559 voters in Devonport, who had been placed on the list for that borough as occupiers of part of a house, and was an appeal from the decision of the Divisional Court upon a case stated by the Revising Barrister for the borough of Devonport, in compliance with an order of the Court of Appeal directing him to state a case.

The Revising Barrister there found: (1) that the house, part of which was alleged to be separately occupied by the voter as a dwelling, was itself a house of the description known as an ordinary dwelling-house; (2) that the landlord or landlady to whom the voter paid rent also resided in the house, and (3) that the landlord or landlady was rated and paid rates for the whole house as a separate tenement, but he declined to hold that these three facts were *prima facie* proof of the ground of objection that the voter did not occupy as owner or tenant, and having made previous inquiries from persons in a position to give reliable information, including his predecessor as Revising Barrister in the borough, and having examined the overseers as to the practice of letting such houses in the borough, he found that the landlord in such cases did not exercise any control over the house, and

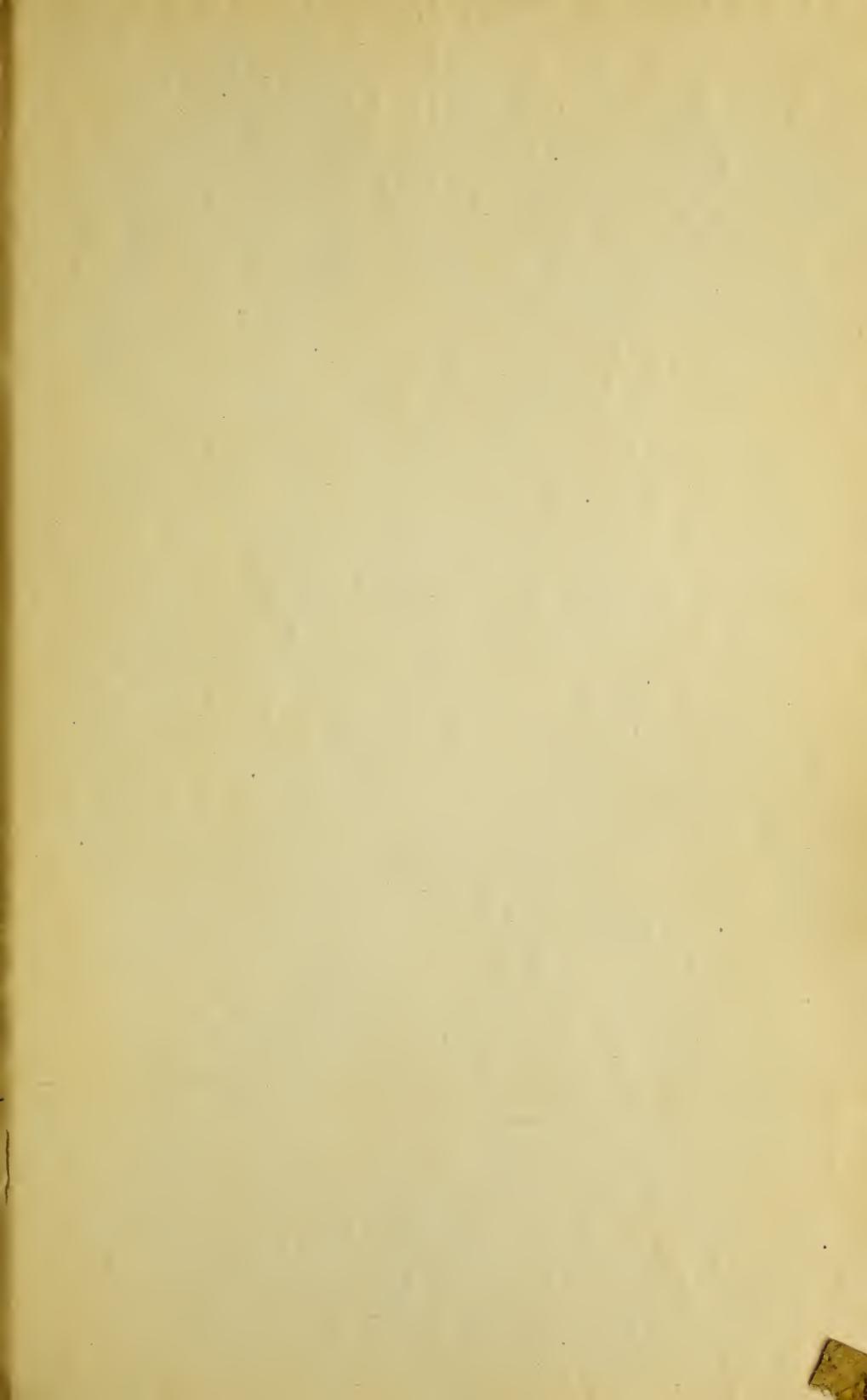
Kent v. Fittall (No. 2). he held that *prima facie* proof of the ground of objection had not been given by the objector, and retained the names on the list.

The Court of Appeal held that the provisions of s. 28 (10) of the Parliamentary and Municipal Registration Act, 1878, which requires an objector to give *prima facie* proof of the ground of his objection before the Revising Barrister, and provide for the giving of such *prima facie* proof to the satisfaction of the Revising Barrister "by evidence, repute, or otherwise" were in aid of the objector, who might give *prima facie* proof of his objection by evidence of repute, but that the sub-section did not authorise the Revising Barrister to rely upon evidence of repute as distinguished from proof in order to defeat the objection.

The Court of Appeal remitted the case to the Revising Barrister for the purpose of completing the revision, being of opinion that, there must be inherent power in the Court to do so, although the statutory period for holding the revision had expired.

It is pointed out by the reporter in a note at p. 948 of [1909] 2 K.B. that this appeared to be the first case in which upon the hearing of a case stated by a Revising Barrister, the High Court had in the exercise of its inherent jurisdiction directed him to hold a revision court after the expiration of the statutory period. He refers to two cases, *Mayor of Rochester v. Reg* (1857), 7 E. & B. 910; (1858) 8 E.B. & E. 1024, and *Reg v. Mayor of Monmouth* (1870), L. R. 9, Q. B. 257, in which the Court of Queen's Bench directed writs of mandamus to issue to the mayor and assessors of those boroughs to hold a court under the Municipal Corporation Reform Act, 1835, for the revision of the burgess lists, although the statutory period for their revision had expired.

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